A TREATISE

ON

COMMERCIAL LAW

AND

BUSINESS CUSTOMS

THIS WORK IS DESIGNED AS A TEXT-BOOK FOR
USE IN SCHOOLS AND COLLEGES AND
AS A REFERENCE BOOK FOR
GENERAL USE

By ANDREW M. HARGIS

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PREFACE

The writer has endeavored in the following pages to state in a plain and concise manner the rules of law which govern in the common every-day transactions of life. No particular claim is laid to originality in this work, for, while it contains some new features, the wording of old and well-tried definitions has in many cases been retained.

Special care has been taken to avoid technical language, and the subject, so far as possible, has been stripped of all legal phraseology. There is nothing in Commercial Law, when clearly stated, that places it above the understanding of any person of ordinary ability, for it is founded upon reason and common-sense. It is doubtful, however, if there is another subject of equal importance concerning which the average citizen knows so little.

It is hoped that a careful study of this work may prove helpful to the general reader, as well as to the student.

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CHAPTER I

LAW IN GENERAL

1. **Law**, when regarded in its broadest sense, is a rule of action. It offers no special reward or privilege to those who obey its commands, but in every case it stands ready with a penalty for each transgressor.

2. **Kinds of Law.**—Law may be divided into four separate classes: *Moral Law, Natural Law, International Law, and Municipal Law* (mu-nis'-i-pal).

3. **Moral law** has reference to that portion of the Old Testament which relates to moral principles, especially the ten commandments. Immanuel Kant, a great German philosopher, once said that two things before all others filled him with ceaseless awe —the starry heavens above, and the moral law within.

4. **Natural law** has been defined as an unwritten law depending upon an instinct of the human race, universal conscience, and common sense. It may also be said to be the law which regulates the forces and processes of the material world.

Examples.—The law of self-preservation, the law of gravitation, etc. To follow this branch of law into an exhaustive treatise would lead to a most subtle

and abstruse discussion of metaphysics, and touch upon almost every department of human inquiry.

5. **International law** is a system of rules recognized by civilized nations and intended to govern their intercourse with each other. It is founded on the principle that different nations ought to do to each other as much good in peace, and as little harm in war, as possible, without injury to their own interests.

6. **Municipal Law.**—Municipal law consists of rules laid down by the state or nation to govern the conduct of its members, the intention being to command that which is right and prohibit that which is wrong.

7. **Division of Municipal law.**—In the United States the Municipal Law may be separated into three distinct classes: *Constitutional Law, Statute Law,* and *Common Law.* Let us look for a moment at our plan of government before taking up these divisions of municipal law.

8. **Constitution.**—At the close of the Revolutionary War the thirteen colonies were free. Although they were closely allied, each was an independent and sovereign nation; but, realizing that in unity there is strength, they decided to enter into an agreement or compact for the purpose of forming a central government.

After much discussion they adopted the Constitution of the United States, or, as it is often called, the Federal Constitution. In this agreement each state surrendered to the central government some of its rights as a sovereign nation, while it retained others in its own hands. All the rights, powers, and privileges of the central government were carefully enumerated, and this famous instrument at once became the fundamental, or organic law of the United States.

Every student is urged to familiarize himself with the constitution of his country and to study the civil government of the United States, for no man can perform his highest duties as a citizen of this great Republic unless he understands the basic principles underlying it.

9. **State Government.**—Every state in the Union has a constitution of its own, which stands as the fundamental law of the state; but it, of course, must not conflict with the Federal Constitution.

10. **Constitutional Laws.**—These laws are based upon the Constitution itself. This great document is our highest legal authority, the supreme law of the land. If the laws enacted by any state or by Congress are in conflict with the Constitution, they are declared by the courts to be unconstitutional and therefore null and void.

11. **Statute Law.**—This has reference to the laws passed by Congress as well as those passed by the legislatures of the various states.

They are of course all written and supposed to be prepared in a careful manner. The laws passed by Congress and signed by the president are binding in every state in the Union, while those passed by the legislatures of the several states and signed by the governors bind only the states enacting them.

12. **Common Law.**—This is sometimes called the unwritten law, as it is not expressed in statutes, but is based upon custom and common sense. It is said to have originated among the primitive Saxons in the heart of the forests of Germany. It has been in use in England from time immemorial, and was brought to this country by the colonists.

It was the outgrowth of custom. Men transacted business in a particular way so long that it finally became a general rule, and by long use it was ultimately crystallized into law.

The common law of England, modified considerably by our statutes, is in force throughout the United States, with the single exception of Louisiana, which adopted the civil law instead. Much of the common law of England is unsuited to the conditions which exist in America, and some of it is ab-

solutely repugnant to our ideas of government and personal liberty. Such of these laws as have been quite generally annulled by the statutes of the various states will be given but little attention in this volume, as it is assumed the reader is more interested in what the law now is than what it was in years gone by.

13. **Commercial law** is that branch of the law which regulates commercial or business transactions. It derives its force, to some extent, from statutory enactments, but a far larger part from long established customs of merchants which have been sanctioned and confirmed by the courts. It is the outgrowth of what is known as the "Law Merchant," which consisted of the various usages and customs of the London merchants, and is better understood when referred to as the Law of Merchants or laws governing mercantile transactions.

Commercial law now embraces much more than the old "Law Merchant," for that dealt more especially with marine affairs and bills of exchange.

LAW

REVIEW QUESTIONS

What is law?

Name four kinds of law.

Define moral law.

Define natural law.

Define international law.

Define municipal law.

Into what three classes is municipal law divided?

What is constitutional law?

What is statute law?

Define common law.

Define commercial law.

Define "Law Merchant."

CHAPTER II

CONTRACTS

14. **Definition.**—A contract is an agreement between two or more competent parties, based upon an adequate consideration to do or not to do some particular thing. The parties must be competent in the eyes of the law to make a contract and the thing to be done must be lawful, otherwise the contract can not be enforced.

15. **Essential Elements.**—Every valid contract has the following essential elements:

1. Parties.
2. Consideration.
3. Subject Matter.
4. Mutual Consent.
5. Time.

These are called the essential elements because no contract is valid without all of them.

Leave out one of them and you have no contract. It makes no difference whether the contract is large or small, whether you are buying a postage stamp or contracting for a ten thousand dollar house, the principle is the same.

16. **Parties.**—An old adage says, "It takes two to

make a bargain." This of course is true, and, while there is no limit to the number that may enter into a contract, there must at least be two parties or no contract can exist.

17. **Conditions of Competency.**—To be competent to make a binding contract the individual must be of legal age and sound mind, and in the case of a corporation it must be organized according to law and acting within the limit of its authority.

18. **Legal Age.**—Under the common law all persons are regarded as infants until they reach the age of twenty-one, but in most of the states by operation of the local statutes females become of age at eighteen[1] and in a few states they become of age at marriage even though they are under eighteen.[2]

A person becomes of age at the *beginning* of the day before his twenty-first birthday; therefore a person born August 10, 1887, would become of age at the very beginning of the 9th day of August, 1908, and he is competent to make binding contracts at any time during the day.

19. **Incompetent Persons.**—The law regards individuals belonging to certain classes as incapable of mak-

[1] Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Missouri, Maine, Maryland, New Jersey, New York, New Hampshire, Nevada, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, North Carolina, Texas, Utah, Vermont, Wyoming, Wisconsin, Washington.

[2] Iowa, Oregon, Washington, and Nebraska. In Nebraska they become of age at marriage provided they are sixteen or over.

ing binding contracts. The names of the classes are as follows:

Persons under legal disability	1. Minors. 2. Married women. 3. Alien enemies.
Persons under mental disability	1. Lunatics. 2. Idiots. 3. Habitual drunkards.

20. **Minority.**—A minor is a person who has not reached his majority or become of age, and on account of his youth and inexperience the law grants him more protection and security than is given to an adult.

21. **Not Void, but Voidable.**—The contracts of a minor are not *void* as is commonly supposed, but only *voidable* at his option. That is, if a party of full age makes a contract with a minor, he can not hold the minor to the agreement, but the minor may hold him. If the contract was absolutely void, neither party would be bound by it.

22. **A Minor's Contract for Necessaries.**—The general rule is that a minor can not make a contract that will be binding upon himself, and yet there is one very important exception to this rule. The contracts he makes for necessaries are valid, and he will be held for the payment of such obligations just the same as

if he were of full age; but no exorbitant price can be collected; it must be the regular or customary price.

It is sometimes rather a difficult matter to distinguish between a necessity and a luxury; but necessaries are usually understood to mean board, clothing, medical treatment, schooling, and such other things as are in keeping with the station and means of the minor.

It is well to remember that what the law might regard as a necessity for one person might be a luxury for another. Furthermore, necessaries have only to do with the person of the minor, and not with his estate, and he can not bind himself for repairs on his property even though without them it would fall into decay.

23. **A minor may ratify or repudiate** his contracts when he becomes of age, but he should do so within a reasonable time after reaching his majority; otherwise his silence may be taken as giving his consent to the contract. Some courts have held, however, that he does not need to either ratify or disaffirm the contract until the other party seeks to enforce it; and in a few states the ratification is not recognized by the law unless it is made in writing.

The privilege which the law gives the minor of repudiating his contract can not be waived or set aside

by him in any possible form of agreement which is made before he reaches his majority.

24. **Emancipation of a Minor.**—A minor may, as a rule, hold property as well as an adult; but, so long as an infant remains with his parents, his earnings or wages will belong to the father, who can generally enforce the collection of same, even though the amount has already been paid to the child.

If a father emancipates his child, that is, gives him his time and earnings, the above rule is reversed, and the child has a perfect right to his own wages, but the parent is no longer liable for his support, unless the infant becomes unable to support himself.

Emancipation may be accomplished by verbal agreement, by a written statement, or it may be implied in case the father turns a minor child out to make his own way in the world. It should be remembered that the fact of emancipation does not increase an infant's capacity to make binding contracts.

25. **Must Return the Property if Possible.**—If an infant decides to avoid his contract, he must return or offer to return the thing he received in the transaction. Thus he can not repudiate his promise to pay for property and still retain the same; but if a minor has used, lost, or destroyed the property so that it can not be re-

turned, he may disaffirm the agreement and refuse to pay the amount due.

26. **"Pleading the Baby Act."**—This may not be very graceful language, but it is an expression used to describe the case of a person who, being sued on a contract, sets up the defense that when he made the contract he was under age; therefore he was not responsible for his act.

This is regarded as very dishonorable, and for that reason is seldom resorted to. If a person feels that he has been wronged or defrauded in any contract made during minority, he has a perfect right to refuse to carry it out, and to demand justice in the courts, but, as a rule, few people are willing to face the odium which attaches to "pleading the baby act."

27. **Wrong Doing of an Infant.**—While the law places about the infant its protecting arms, it will not permit him to commit a crime or do a wrongful act. If he breaks the law he is as liable to punishment as though he were of full age. For example, if an infant fraudulently represents himself to be of age when he is not and thereby induces some one to make a contract with him, he is liable in an action for fraud, although the contract itself may be avoided by him. Again, if a minor commits an assault upon anyone or is guilty of

any breach of the law, he is liable to fine and imprisonment the same as if he were of full age.

28. **Contracts of Married Women.**—Under the common law a married woman is incapable of making a contract of any kind. A widow or unmarried woman of full age is perfectly competent, but the interests and legal existence of a married woman are supposed to be so completely merged into the interests of her husband that she has but few if any legal rights left to her.

The title of all her personal property passes absolutely to her husband at the time of her marriage, and he at the same time becomes responsible for her debts contracted before marriage. This law, however, is so un-American, and so foreign to our ideas of justice, that nearly all the states have enacted statutes giving a married woman the right to retain her property in her own name and to do with it what she desires.

We give below a brief abstract of the law as found on the statutes of a few of the western states.

28. **Nebraska.**—The law of Nebraska gives to a married woman full control of all her real estate as well as her personal property. This includes all property acquired by her before and after marriage, except such as she has received from her husband by gift. She may sell, rent, or make any contract relative to her property in the same manner as if she were single. Neither husband nor wife is liable for the private debts of the other. If the homestead is sold or mortgaged the instrument must be signed by both husband and wife, and the same is also true as to the household goods used by the family.

When signing as surety or guarantor, a married woman does not bind her own individual property unless it can be established that she intended when signing the instrument to bind her separate estate. It is safest in all cases when a married woman signs a note or contract to insert the following words: "This contract is given on the faith and credit, and with reference to my separate estate."

Women become of age at sixteen if married, or otherwise at eighteen. The widow is entitled to the use during her life-time of one-third of her husband's real estate, and if the husband makes a will she may take her choice between the will and one-third of lands.

30. **Kansas.**—In Kansas all property, both real and personal, acquired by the wife either before or after marriage is her separate property and not liable for the husband's debts. She may buy and sell, sue and be sued as if she were single. She can not bequeath more than one-half of her property away from her husband without his written consent. If either dies intestate and without children, all his or her property goes to the survivor. If a husband deprives his wife by will of more than one-half of his property she may take her choice between the will and one-half of his property. Dower and courtesy are abolished. Women attain their majority at eighteen. Wife must join in all mortgages except those given for purchase money.

31. **Colorado.**—All property coming to the wife before or after marriage, including gifts from her husband, remains her sole property. She can not bequeath more than one-half of her property away from her husband without his written consent, and the husband can not, by will, deprive his wife of more than one-half of his property. The husband is liable for his wife's debts contracted before marriage to the extent of the property he has received through her, but no further. Dowery is abolished. Wife may sue and be sued. Women are of age at twenty-one. Expenses of the family and education of the children may be charged to either husband or wife or both.

32. **South Dakota.**—The wife has entire control of all her property and may sell, convey, and devise the same as freely as though unmarried. Neither husband nor wife are responsible for the debts or acts of the other. Dower and courtesy are abolished. Women become of age at eigheen.

33. **Iowa.**—In Iowa all property owned by a married woman is under her full control. She may sell, mortgage, rent, or will the same without interference from her husband. Neither is responsible for the debts of the other. Family expenses, education of children, etc., are chargeable to either or both, and they may be jointly or severally sued. Dower and courtesy are abolished. In case of death of either husband or wife the survivor receives one-third in value of all real estate owned by the other.

34. **Montana.**—Wife's contracts in respect to her separate labor or services are not binding upon her husband. She shall not, by will, deprive her husband of more than two-thirds of her real or personal property. All property acquired by the wife before or after marriage is entirely under her control. Husband is not liable for debts contracted by wife before marriage. Mortgage given by husband is good even when not signed by wife. Wife is entitled to a dower consisting of one-third of her husband's real estate.

35. **North Dakota.**—A married woman may own and manage her property the same as if she were unmarried. The husband must support his wife out of his property or by his labor, but if he has no property and on account of infirmity can not support himself, when the wife shall support him out of her property. Husband is not liable for debts of wife contracted before marriage.

36. **Wyoming.**—Husband is not liable for any antenuptial debts of wife unless he assumes such debts in writing. Wife may make a will, own and control real and personal property the same as if she were unmarried. Her property can not be held for the payment of her husband's debts.

37. **Alien Enemies.**—An alien is a foreigner, that is, one born in, or belonging to another country, who has not been naturalized.

When two nations are at war, the subjects of each country are alien enemies to the subjects of the other. War puts an end at once to all business dealings and all communications. The policy is to keep the citizens

of each nation attached to their own country, and the law says that all contracts between alien enemies are absolutely void on the ground that an enemy would otherwise be able to withdraw the resources from the country for the benefit of the opposing nation.

38. **Naturalization** is the process of conferring upon foreigners the rights of citizenship. Any foreigner may become naturalized in five years from the time he arrives in this country, provided he takes out his first papers during the first three years he is here.

Two years must in every case lapse between the time he takes out his first and his final papers. He is required to renounce forever his allegiance to all foreign countries, and to make an oath of affirmation that he will support the Constitution of the United States. If he has any title of nobility he must also renounce that.

Foreigners who have served one year in the United States army and been honorably discharged from the same may become citizens by taking the required oath.

Children born in foreign lands of parents who are citizens of the United States are also citizens of this country. When a man secures his final papers of naturalization, this act makes him a citizen and also

makes citizens of all his children who are under twenty-one years of age.[3]

39. **Lunacy.**—A lunatic is an insane person or one who has lost the power of reason. Some are entirely devoid of reason, while others have lucid intervals during which time they are perfectly rational. If contracts are made during these lucid intervals they are valid and binding.

Some people are insane upon certain questions only, while they are intelligent on all others, and it has been held that they are competent to contract as to all subjects on which they are entirely sane.

Lunacy must be established by good evidence before a contract can be avoided on that ground.

The same rule that governs the contracts of minors for necessaries also applies to lunatics.

40. **Idiocy.**—An idiot is a person who is born without reason or mental capacity, and for his own protection the law will not enforce any contracts he may make unless it be for necessaries.

The idiot differs from the lunatic in this: the idiot is born without reason, while the lunatic has a sound mind at birth but loses it afterward.

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[3] Foreigners who are of legal age are allowed to vote in Nebraska and some other states provided they take out their first papers, thereby declaring their intention of becoming citizens, at least thirty days before election. All others in Nebraska must reside in the state six months, county forty days, precinct, township, or ward ten days before they can vote.

41. **Intoxication.**—A person who is so completely intoxicated as to be devoid of reason is incapable of making a binding contract except for necessaries.

One of the essential elements of a contract is *consent,* and a drunken person is no more capable of giving intelligent consent than is an idiot or insane person. Partial intoxication will not enable one to avoid his contracts; yet if there are any evidences of fraud or imposition it would be hard to enforce an agreement made under such circumstances.

42. **Responsible for Crimes.**—The law is very considerate of the weaknesses of mankind and will not enforce the contracts of a drunkard even though the intoxication is brought on voluntarily; but if he commits a crime, he must suffer the penalty. To set aside a contract is an easy matter and no one is seriously harmed, but a crime when once committed can never be undone, and the interests of society demand that the person who voluntarily drowns his reason by intoxication shall pay the penalty for all his misdeeds. While intoxication is no defense to a criminal prosecution, it sometimes has the effect of reducing the class of the particular offense.

43. **Duress** is another condition of incompetency to make a binding contract. It is defined as fear of personal injury or imprisonment.

For example, a man may be illegally held a prisoner until he agrees to pay a large sum of money. The contract would be void as he did not give his *voluntary consent,* and that is necessary to every valid contract.

Again, a man may be threatened with death or severe torture unless he will sign a deed to all his property. If it can be proved that he gave the deed through fear of personal injury it will be declared void and be set aside by the courts. It should be remembered that this does not apply to contracts made while one is lawfully imprisoned; for such contracts are binding.

CONTRACTS

REVIEW QUESTIONS

Define a contract.

Name the essential elements of a contract.

Who may make binding contracts?

What is meant by legal age?

Name the classes of people who are incapable of making contracts.

Are the contracts of infants void or voidable?

Are any contracts of infants binding?

May an infant ratify his contract on becoming of age?

What is "pleading the baby act"?

What is meant by emancipation of a minor?

Are infants responsible for torts?

Are contracts by married women binding?

Who is an alien? Who is an alien enemy?

What is meant by naturalization?

How is it accomplished?

Who is a lunatic?

Who is an idiot?

To what extent is drunkenness a disability?

Is an intoxicated person held responsible for a crime?

What is duress? Is legal imprisonment duress?

CHAPTER III

CONSIDERATION

44. **Definition.**—The consideration in any contract is the cause that moves the party to enter into it. You contract to sell a horse for $100 cash. The consideration to you is the money. You trade another horse for a new carriage. The consideration this time is the carriage. You are rescued by a stranger while in great danger of your life, and you show your appreciation by making him a present of a nice horse. The consideration to you in this case is gratitude. You give your mother a nice horse and carriage as a present. The consideration is love.

Every contract must have a consideration; otherwise it will be void, but it will be seen that the consideration does not necessarily consist of a transfer of money.

45. **An expressed consideration** is one that is clearly stated in the contract.

46. **An implied consideration** is one that is not stated but which the law presumes to exist. For example, a promissory note does not usually state the purpose for which the note was given, but the law presumes that there was some value received for same.

Legal consideration may be divided into two classes as follows:

1. Good.
2. Valuable { Benefit to promisor. / Loss or inconvenience to promisee. / Mutual promise.

47. **A good consideration** is founded upon love, gratitude, or affection. A consideration of this kind will not uphold an *executory contract,* that is, one to be performed some time in the future; neither will it support a contract the object of which is to defraud creditors or hinder them in collecting their dues; but it will support a contract that has already been finished, called an *executed contract.*

Mr. B says to his son, "I have now accumulated considerable money and to-morrow I will give you $1,000, to be used as you see fit." This is a promise of something to be done in the future based upon love as the consideration, and the father can not be compelled to keep his promise.

Had he given his son the money instead of promising to do so at some future time, the contract would have been completed when the son accepted the money, and it would have been binding, as a consideration based upon love will uphold an executed contract.

When some third person would be defrauded by

giving away property, the gift will not stand in law, even though it has already been accepted. A father might deed all his property to his son, just to avoid paying his debts. In that case the creditors could have the deed set aside, as the law will not protect any one in a fraudulent act.

48. **A valuable consideration** is something which is (1) a benefit to the person making the promise, (2) something that is a loss or inconvenience to the one to whom the promise is made, or (3) a mutual promise.

49. **The benefit** may be anything of value, as the delivery of money or goods, or performing some service, or, in fact, anything that is a benefit to the promisor.

50. **Loss or Inconvenience.**—If the contract is made in good faith it matters not how insignificant the loss or how small the inconvenience, it will be binding.

If I promise to pay you $100 to-morrow morning you can not compel me to keep the agreement, but if I promise to pay you that amount if you will call at my office at nine o'clock you can hold me to the contract, because something is required of you which is an inconvenience.

A legal maxim says "The slightest consideration will support the greatest undertaking."

51. **Mutual promises** are sufficient to support each other, but they must both be made at the same time. A

good illustration of this is a mutual promise of marriage, which is of course binding on both parties. A promise to accept and pay for a copy of Webster's Dictionary is sufficient consideration for a promise to sell and deliver same.

52. **Other Sufficient Considerations.**—There are other considerations which are sufficient to support contracts, but it is not thought necessary to discuss them here for the reason that they seldom occur in ordinary business transactions, but we mention a few of them:

Forbearance to institute suit at law, offering rewards, trust and confidence reposed in another, considerations coming from a third person. These and others are all fully discussed in Kent, vol. 2, p. 463.

53. **Insufficient consideration** may be separated into the following divisions:

1. Gratuitous.
2. Impossible.
3. Moral.
4. Executed.
5. Illegal.

54. **Gratuitous Consideration.**—A contract based upon a consideration that is wholly gratuitous is void unless the contract is executed at the time it is made, as gratitude will not support an agreement to be performed in the future.

A father gives his son a promissory note of $100, payable in six months. This contract is void as between these parties, and the collection of the note can not be enforced.

Subscriptions to a church or charity are as a rule also void if purely gratuitous, and can not be collected unless such institution incurred some expense, debt, liability, or obligation, relying on the subscription as a means of paying it or part of it. Some courts, however, have held that such subscriptions are binding when several different persons have signed the list, the theory being that the promise of each subscriber is the consideration for the promise of the others.

You can not collect pay for services you have rendered gratuitously; such as voluntary assistance in saving property from fire, working for a man without his knowledge or consent, payment of another's debts without his consent or request, etc. An exception to this rule is in case of *salvage,* where a person is allowed pay for the actual services rendered while saving goods from a wreck at sea or from pirates.

This doctrine must not become confused with the obligation of every person to pay for work when performed for him with his implied consent. If you go into my field and begin work, even without my re-

quest, the law raises an implied promise on my part to pay you what your services are worth, provided I know you are working and do not interfere or request you to quit.

55. **Impossible Consideration.**—The law will not recognize contracts in which either party promises to do something that is well known to be impossible. Such contracts are void. No one can evade a contract simply because it is very difficult, but it must be absolutely impossible and beyond the range of human ability.

56. **Moral Consideration.**—A moral obligation is not sufficient to support a contract, and many things that a person of strict morals would feel himself bound to do could not be enforced by law. As an illustration, let us suppose a young man twenty-one years of age, being away from home, meets with a bad accident. He is given the best of care at a hospital, and through skillful attention his life is saved. His father afterwards writes to the hospital that he will pay the bill. This promise is not binding, yet the father would feel a moral obligation to pay it.

57. **Executed Consideration.**—An executed consideration will not usually support a contract. *Example.*—You buy goods at a store and pay for same. Afterwards the merchant tells you he warrants the goods

to be of special kind and quality. This warranty is void because it was no part of your contract with him You have already paid for the goods, but paid nothing for the warranty. If he had said before the sale that he warranted them to be of special kind and quality, it would have been binding, for then you pay the price, not for the goods alone, but for the warranted goods.

58. **Illegal Consideration.**—A promise to do something which is illegal is not sanctioned by the law. Should the law uphold a contract of this kind it would be using its own strength against itself. Thus an agreement to smuggle goods into this country without paying duty or to commit a crime would be void, and payment for such work could not be enforced in the courts of justice.

59. **Failure of Consideration.**—Where the consideration which was thought at the time of the contract to be good, turns out to have been worthless, the contract is void, and if money has been paid on it the same may be recovered, also if there is a partial failure of consideration, the injured party is entitled to relief.

A sells to B one thousand head of sheep located in Colorado, but it is afterwards learned that the sheep had all perished in a storm the day before the sale was made. In this case there is a complete failure of

consideration, and the buyer of the sheep is entitled to have his money returned. In every case when the thing sold is dead or destroyed at the time of sale, and this fact is unknown to the parties, the contract becomes null and void for want of consideration.

The same may be said of any sale where the seller does not possess a good title to the article sold.

CONSIDERATION

REVIEW QUESTIONS

Define consideration.

Distinguish between expressed and implied consideration.

What is a good consideration?

What kind of contracts will it support?

What is a valuable consideration?

Will mutual promises support a contract?

What is an insufficient consideration?

Define gratuitous consideration.

Define impossible consideration.

Define moral consideration.

Define executed consideration.

Define illegal consideration.

What is meant by failure of consideration?

What effect does partial failure of consideration have on the contract?

CHAPTER IV

SUBJECT MATTER

60. **Definition.**—The subject matter of a contract is the thing agreed upon to be done or not to be done.

61. **What it May Be.**—It is impossible to name all the things that may be made the subject matter of a contract, for within certain reasonable limitations parties are at liberty to make contracts to do anything they please.

It is much easier to classify and discuss those things which the law prohibits rather than those which it allows. It is a settled policy of the law, however, that no contract will be recognized in the courts that is not based upon a lawful act.

62. **What it Must Not Be.**—Nothing can be the subject matter of any valid contract which is (1) illegal, (2) immoral, (3) impolitic, (4) fraudulent.

63. **Illegal Subject Matter.**—When the subject matter of a contract is anything against the laws of our country, it is absolutely void. The court will not lend its strong arm to enforce a contract that is made in violation of the law.

Thus a contract by which a man is to receive $500 for engraving and printing counterfeit money is en-

tirely void, and he can collect nothing even though he performs his part of the agreement. The same may be said of a contract to do anything that is contrary to the common or statute law.

64. **Immoral Subject Matter.**—No contract, the subject matter of which is immoral, has any standing in law. A contract for the publication, sale, or distribution of obscene literature is therefore void. All bets and wagers are void under the common law, and in some of the states money may be recovered which has been lost in this way.[4] The United States government will not allow any lottery to use the mails, nor will it allow any newspaper to be sent through the mails if it contains an advertisement or announcement of any lottery. Most of the states have enacted laws against Sunday desecration, and in some cases they have declared all contracts made on Sunday to be null and void.

65. **Nebraska statute** on Sabbath breaking says any person fourteen years of age or upwards found guilty of sporting, rioting, quarreling, hunting, fishing, or shooting shall be fined $20 or sent to the jail not ex-

[4] Nebraska statutes make betting on any game or gambling device an offense punishable by a fine of not less than $100 or more than $300, or imprisonment in the penitentiary not more than one year. Money lost in gambling may be recovered by the loser, his wife, legal representative, or his creditor. Any one enticing minors to gamble will be fined not less than $50, or imprisoned not less than one month. Proprietors of billiard rooms are liable to a fine of $25 if they allow a minor under eighteen years to remain upon their premises. Betting on election is finable in sums of $5 to $100, the fine being the same amount as the wager. Promoters of lottery enterprises of any description are finable in the sum of $500.

ceeding twenty days, or both. If any person of the age of fourteen years or over shall be found at common labor (work of necessity and charity only excepted) he or she shall be fined from $1 to $5.

This does not apply to those who conscientiously keep the seventh day of the week as the Sabbath, nor does it prevent emigrants from traveling, nor apply to railroads, watermen, keepers of toll gates or bridges, ferrymen, or persons moving their families on such days.

Contracts entered into on Sunday in Nebraska are not void.

66. **Impolitic.**—When a contract is against the public good or at variance with the established policy of the government it is said to be impolitic, and is therefore void.

They will be briefly discussed under the three following heads:

1. Contracts in restraint of trade.
2. Contracts in restraint of marriage.
3. Contracts which obstruct public justice.

67. **General Restraint of Trade.**—The law looks with disfavor upon any contract that has a tendency to restrain trade. It is thought to be for the public good that every man be allowed to follow his own lawful business or profession, and even though a contract in

violation of this principle be supported by a valuable consideration the law will not enforce it.

A partial restraint of trade is often sustained by the courts, but such restraint must be reasonable both in time and place. You buy a drug store and the good will of the business from Mr. A, and he agrees that he will never enter into the drug business again any place. This contract is void, as it is in total restraint of trade, and he may open a drug store next to you within a week, and you can not stop him. If he had agreed to not enter into the drug business in your city for a period of, say, five years, that would have been regarded as a reasonable restraint, and the contract could have been enforced. In deciding whether or not the restraint is reasonable, one must take into consideration all the circumstances surrounding the particular case.

"Trusts," "combines," "corners," etc., are all in restraint of trade, and while they are only a partial restraint they are regarded as unlawful and against the public welfare.

68. **General Restraint of Marriage.**—As some one has well said, the law makes marriage an easy contract to enter into, but a hard one to break.

The policy of the law is to encourage entire freedom of choice in marriage, and any contract which places

one under restraint or abridges one's freedom in this matter is regarded as against the best interests of society, and therefore void.

In certain cases, however, a limited or reasonable restraint will be recognized as just and legal. For example, a father leaves property to his children by will, on condition that they do not marry before the age of twenty-one. This would be not only reasonable, but would prove a protection against the possible errors of an early marriage.

On the other hand, if the will provided that the children should never marry or should not marry before the age of fifty, it would be entirely void as to that point.

A condition in a will that a child is not to marry a particular person, or shall not marry against the consent of certain friends, has been held as valid.

A man may, if he wishes, leave a bequest to his wife on condition that she remain a widow, and this will not be regarded as an unreasonable restraint. The law seems to be satisfied with one marriage for each person.

Contracts to negotiate marriage for a consideration are utterly void, and money paid for such purpose may be recovered.

69. **Obstructing Public Justice.**—Courts are estab-

lished that justice may be administered to all men, and any contract that tends to defeat this purpose is null and void. Any bargain to "pack," "bribe," or otherwise influence the decision of a jury, or to suppress certain evidence in a criminal trial, can not be enforced.

The same may be said of using undue influence on the members of any legislative body.

70. **Fraudulent.**—The law will not countenance any transaction that is tinged in the slightest degree with fraud, and whenever fraud enters into any contract it vitiates the entire agreement.

Parties contracting may perpetrate a fraud, (1) on each other, (2) on a third party.

71. **Fraud on Each Other.**—Whenever one party induces another to enter a contract by means of fraud, the contract is voidable at the option of the injured party, but when both parties are guilty of fraud the law will leave them where it finds them, that is, neither can enforce the agreement against the other. A buys goods from B and gives in payment a worthless note which he represents as good. B also commits a fraud by selling damaged goods, while he represents them to be in perfect condition. In this case neither one can compel the other to fulfil the contract, and

neither can recover anything from the other in settlement.

72. **Fraud on Third Party.**—Any agreement between two persons that operates as a fraud on a third party is void.

Perhaps the most numerous of this class are *fraudulent assignments,* wherein the debtor, finding himself on the verge of bankruptcy, assigns all his goods and property to some of his friends without consideration, thereby hoping to defraud his creditors.

Such contracts are wholly void under the common law and also by the statutes of most of the states.

Even though the debtor received full value for the goods from his friend, the sale may be set aside if it can be proved that the friend acted with intent to defraud the creditors.

Another class of fraud on third parties is *fraudulent sale.* In this case the property is sold; but the seller retains possession. This is held to be a fraud on all creditors, who, knowing nothing of the sale and seeing the property still in the debtor's hands and believing it to be his, give him a much greater credit than he deserves.

The secret use of *by-bidders* at an auction sale is also a species of fraud, the object being to run up the prices by fictitious bids, there being a secret under-

standing that the by-bidder is not to be held to his bids.

If any purchaser has been misled by thinking these by-bidders were genuine buyers, he may avoid the contract.

73. **Enjoined by Law.**—A contract to do or not to do something enjoined or commanded by law is void, as there is no consideration. An agreement to do anything which you are already required by law to do does not increase the obligation.

A father promises his son that he will give him $1,000 the day that he is twenty-one years of age on condition that he faithfully obeys the law of the state relative to Sunday desecration. The father can not be compelled to pay this money even though the son keeps his part of the contract in good faith, for the law insists that every one shall refrain from Sabbath desecration, and to make a contract to do so adds nothing to the obligation.

74. **Mutual Assent.**—Mutual assent or consent is defined as the meeting of minds, that is, all parties to the contract agreeing to the same thing at the same time. This is one of the essentials of a contract, and where there is no agreement between the parties or no meeting of minds there can be no contract.

Mutual assent may be separated into two parts: (1) a proposition, (2) its acceptance.

75. **A Proposition.**—In entering upon any contract the first step is to make a proposition. This is simply an offer and has no binding force unless it be accepted by the other party.

You go to a furniture store to buy an easy chair; the dealer shows you one and says the price is $15. This is a proposition. You like the chair, but think the price too high, so you offer him $13. This is another proposition, but there is thus far no bargain or mutual agreement. All that is needed is an acceptance to either of the propositions.

76. **Acceptance.**—This simply means giving assent to the proposition. In the example given in the paragraph above, if the dealer accepts your offer of $13 you both agree on the same price at the same time, and the contract is complete. But suppose he does not take your offer, and later in the day you pass by his store and he calls you in saying he has decided to accept your price and sell you the chair for $13. You are not bound to take it, because an offer must be accepted at once, otherwise it may be withdrawn.

Whenever one person makes an offer and the other agrees to the terms there is a contract, and it makes no difference whether it is done by word of mouth, by writing, by signs, by shaking hands, by a wink of the eye, or by silence.

77. **Time Limit.**—A offers to sell a horse to B for $150, saying he will give him two days in which to think it over and accept. If B accepts within the two days the contract is completed, but A has the liberty of changing his mind and withdrawing the offer at any time within the two days provided B has not already accepted.

78. **Option.**—You offer to sell C your farm for $5,000 and he says he will give you $20 for an option of ten days, that is, ten days' time to think it over, and decide. If you accept the $20 you can not then withdraw your offer during the ten days.

79. **Written Acceptance.**—A piano company in Chicago writes you quoting a price on a piano and you receive the letter Monday. Tuesday you answer the letter, accepting the offer, and the contract is completed when you mail your acceptance. You receive a letter or telegram from the company one-half hour later saying they have withdrawn their offer, but it is too late; you have already mailed your acceptance.

Any offer made by mail is supposed to hold good until the person to whom it is addressed receives same and has a reasonable time to answer.

Of course a second letter or telegram may be sent withdrawing the offer, but they must reach the party before he has mailed his acceptance.

80. **Mistakes.**—The law intends to deal justly with all men, and in cases of a mutual mistake relative to the facts in any contract either party may insist on having the error corrected or the contract set aside.

Mr. A goes to Mr. B, a jeweler, to buy a solid gold watch. He sees what he supposes is one and buys it. Later he learns that it is only a plated watch, but he can not return it, for B did not sell it to him as solid gold.

This was not a mutual mistake. But suppose A had asked for a solid gold watch and B understood him to say gold plated watch. Then if he buys the plated watch there is a mutual mistake, and the contract will not stand.

81. **Must Not Be Conditional.**—If the acceptance to a proposition is qualified or conditional, there is no contract. A writes to B offering to sell one thousand bushels of good wheat at a certain price. B answers that he will take it, but will expect it to be of first quality. This is no agreement, because B has added a condition in the acceptance which was not in the offer.

82. **Time.**—This is the last of the primary or essential elements of a contract. The time is either expressly stated or implied. In computing the time fixed for completing a contract, if the last day comes on

Sunday, the party has the next day in which to perform it. This rule does not apply to negotiable papers having days of grace, for if the last day of grace falls on Sunday the note is payable the day before.

When no time is mentioned in which the contract is to be performed, the law implies that it is to be done in a reasonable time. Just what is meant by "reasonable time" must be determined by the conditions and circumstances surrounding the particular case. Negotiable paper is due on demand when no time of payment is mentioned.

SUBJECT MATTER

REVIEW QUESTIONS

What is the subject matter of a contract?

State what can not be subject matter of a contract.

What is meant by impolitic subject matter?

What is meant by illegal subject matter?

What is meant by immoral subject matter?

What is meant by fraudulent subject matter?

What is meant by general restraint of trade?

Is it lawful?

What is meant by general restraint of marriage?

Is it lawful?

To what extent will the law allow restraint of trade or marriage?

What is meant by obstructing public justice?

Will the law countenance fraud in a contract?

What is meant by a contract to do something which is enjoined by law?

What is mutual assent?

What is a proposition?

How soon must a proposition be accepted?

Must the acceptance be written?

May the acceptance be conditional?

What is an option?

If no time is mentioned in the contract, what is implied?

If both parties to the contract are guilty of fraud, will the law assist either of them?

CHAPTER V.

KINDS OF CONTRACTS

83. Thus far we have discussed the Essential or Primary Elements of contracts, but now we will consider some of the different kinds of contracts as well as a few of their peculiar features.

With reference to the time of their performance contracts are divided into two classes:

1. Executed.
2. Executory (Eg-zek'-ū-tō-ry).

84. **An executed contract** is one that has already been performed. For example, you purchase a book, receiving the same and paying the money; or you trade your watch for a horse, making the exchange at the time of the trade. If any part of the agreement has not been performed it can not be called an executed contract.

85. **Executory Contract.**—This refers to all contracts which are to be performed at some future time.

A sells to B one hundred head of cattle, same to be delivered within thirty days, at which time the price agreed upon is to be paid. This is an executory contract because it has not yet been performed. If the cattle are not delivered, B will not have to pay the

money. After B delivers the cattle and A pays the money, then it will become an executed contract. So it will be noticed a contract may be executory one day and executed the next.

86. **As to Solemnity.**—Contracts are divided as to solemnity as follows:

1. Specialty (spesh'-al-ty), Always written.
2. Simple or Parol { Written, Always expressed. / Oral { Expressed or / Implied.

87. **By Specialty.**—When a contract is under seal it is said to be a *contract by specialty,* and at common law a specialty debt is given priority over simple contracts.

Specialties do not require that the consideration be either expressed or proved. In other words, after the contract has been signed and sealed, the law will uphold it without regard to whether any consideration passed between the parties or not.

The doctrine of *estoppel* (es-top'-el) applies to all specialties, that is, no one is allowed to deny with his lips what he has signed and placed under seal with his hand. While this is the common law, it should be remembered that it has been modified by the statutes of many of the states so that the consideration of even a sealed contract may be inquired into.

Specialty contracts and the use of private seals have been abolished by many of the western states.[5] Others,[6] while still requiring them to be attached to the most important documents, such as deeds and mortgages, allow them to be made by a simple scroll with the pen; and yet they are so often referred to that it is important for the student to have some knowledge of them.

88. **Seal.**—A seal consists of an impression in wax or some tenacious substance. It is placed near the signature and is supposed to be not only an evidence of the genuineness of the signature, but to also indicate a certain solemnity and deliberation in executing the instrument.

The student should bear in mind that the seal referred to is that of the individual signers of the instrument, and not the seal of the notary public.

In the discharge of mortgage on the next page Carl M. Cook, the notary, uses his official seal to give authority to his own signature. But when in the instrument I. M. Porter says "Witness my hand and seal" he has reference only to the seal placed opposite his own name.

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[5] Arizona, Alabama, California, Colorado, Indiana, Iowa, Kansas, Kentucky, Montana, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Tennessee.

[6] Connecticut, Georgia, Illinois, Missouri, Maine, Michigan, New Jersey, Oregon, Rhode Island, Utah, Virginia, West Virginia, Wyoming, Wisconsin, Washington.

The use of the individual seal is as old as writing itself; in fact there seems to have been a real advantage in its use before writing became a universal accomplishment. For centuries the art of writing was known only to a few scribes or scriveners, and they would carefully prepare all documents, but the parties to the contracts, not being able to sign even their own names, would affix their seals as their signatures, to indicate that they gave their consent and approval.

No. 5.—Release of Mortgage

In consideration of the payment of the debt named therein, I release the mortgage made by T. C. Leming to me, which is recorded in Book 124 of mortgages, page 217 of the Records of Phillips county, Kansas.

Witness my hand and seal this tenth day of October, 1901.

I. M. Porter. (Seal.)

State of Kansas, } ss.
Phillips County. }

On this eleventh day of October, 1901, before me, a notary public in and for said county, personally appeared I. M. Porter, to me known to be the identical person described in, and who executed the foregoing instrument, and acknowledged same to be his voluntary act and deed.

Carl M. Cook,
Notary Public.
My commission expires September 3, 1904.

At a very remote period it was said that the king would simply dip his hand in ink and apply it to the

document, letting the great blot serve as his seal or signature. Later many devices were used to guard against imitation. A pebble would sometimes be broken in the middle, leaving an irregular surface; this could be used as a seal by pressing it into melted wax. But with the development of the art of engraving began the really extensive use of the seal, and Herodotus tells us that at one time every Babylonian wore his private seal.

The most exquisite works of art preserved from the Middle Ages are the monastery seals. They are beautifully engraved on ivory and precious metals. Some are divided into four quarters, each of which was kept by one of the four officers. The four pieces are joined by a key handle, which remained in the hands of the secretary. Thus it was only when the five guardians of the seal met together that a complete seal could be stamped upon any document.

The signet ring was much used, and is worn even yet to some extent, but the written signature is now regarded as the safest means of proving the genuineness of any document. The private seal as now used is nothing more than a relic of barbarism handed down to us from the Dark Ages, and is a good example of the tenacity with which the legal profession adheres to obsolete forms and usages.

89. **Simple or Parol Contracts.**—A parol or simple contract is one not given under seal, that is, there is no seal opposite the signature of the maker. Parol contracts may be either written or oral, and they constitute by far the greater part of all the ordinary contracts in daily use.

90. **A bilateral contract** is a two-sided agreement where one or more parties on each side of the contract are bound by its terms. *Example*—You agree to work for me one month, and in return for your services I agree to pay you $50. In this case you bind yourself to do the work, and I bind myself to pay $50.

91. **A unilateral contract** is a contract having but one side. In other words, it is an agreement in which but one party is bound by a promise to do anything, the other having performed his part of the contract. A promissory note is a good example. You loan me $50 and by handing me the money you have completed your part of the contract; but I give you my promissory note for that amount, in which I promise to perform my part of the contract, that is, pay the $50 back to you.

92. **Expressed contracts** are those in which the terms and conditions are fully set forth and agreed to. They may be either written or oral.

If you say to me, "Please send me five bushels of your best potatoes to-morrow, and I will pay you $4 for same on delivery," we make an express contract if I accept. You have left nothing to be implied or inferred, but have given the conditions and terms in full.

93. **Implied contracts** are those in which the parties fail to state clearly what was evidently their meaning. In the illustration above suppose you say, "Please send me five bushels of potatoes." The law then implies that you will pay for them at the market price, and that they shall be good potatoes and delivered within a reasonable time.

When something is omitted from the contract, the law always presumes it to be something which is in accordance with reason and justice.

94. **A verbal or oral contract** is one made by spoken words and not reduced to writing. You agree to deliver to me ten bushels of apples within one week, for which I agree to pay you $15. This is an oral or verbal contract and is as binding as a written one. There are certain classes of contracts which the law insists must be in writing, but aside from these a verbal contract is just as good and as binding as a written one, only it is much more difficult to prove.

95. **Written contracts** are those in which the parties

put their agreement down in writing, and while it can not be said that they are stronger than verbal contracts, when the verbal contract is legal, yet they have many advantages when it comes to proof. People are very forgetful, and sometimes they so completely forget their verbal promises as to insist that they never made them; but a written agreement which has been signed can not well be denied.

Written agreements are always express contracts, and the law does not usually imply promises which are not found in them.

Certain classes of contracts must be written or the law will not enforce them. These are explained in what is called the "Statute of Fraud," under which heading they are discussed.

96. **Joint Contract.**—This is a contract by which all the signers agree to perform together the promised obligation. They do not promise to do anything individually, but agree that jointly or all together they will carry out the agreement. The parties to a joint contract must usually be sued together, but in case of death of one of the parties the survivor may be sued alone. This form of contract is now practically obsolete, and the joint and several contract has taken its place.

97. **Joint and Several Contracts.**—In contracts of this

kind the parties not only promise to jointly perform the obligation, but each individually promises to do it alone, and the holder of such a contract may sue all of them together or each individually.

If one who signs a joint and several, or a joint note, should be compelled to pay more than his proportion, he can recover from the others enough to equalize the payments.

98. **Interpretation of Contracts.**—Oftentimes a contract is, through ignorance or carelessness, drawn in such a manner that it is difficult to understand its meaning, and for this reason it is found necessary that some rules be laid down for interpreting the same.

99. **Intention of the Parties.**—The object of these rules is to discover, if possible, the exact intention of the parties making the contract, and if their mutual intention can be ascertained the contract will be interpreted in accordance with same, even when this is directly opposed to the written words.

The presumption of the law is that all contracts are made in good faith with the intention of binding the parties thereto, and in case the language is such as to admit of two meanings, one frivolous and inconsistent while the other is rational, the rational view will prevail.

100. **According to Custom.**—Another source of aid in ascertaining the real intention of the contracting parties is found in the usages and customs of trade in the particular locality where the contract is to be executed.

For example, "cotton in bales" means *compressed* bales in some places and in others it means merely *bags,* and the meaning of the phrase would therefore depend upon the place where the agreement was made. Terms used in the contract, whether technical or otherwise, are to be interpreted according to the customary or popular meaning rather than according to the exact definition of the same.

101. **Whole Contract Must Be Consistent.**—The interpretation must be placed upon a contract as a whole, and each part must be consistent with all the other parts, but should there be some portion of the agreement that is directly opposed or repugnant to what was the evident intention of the parties, such contradictory part will be stricken out.

102. **Written Portion Will Hold.**—Many contracts are made on printed forms with blank lines to be filled in with a pen, and in case the printed portion conflicts with the written part the law will assume the writing to be correct.

KINDS OF CONTRACTS

REVIEW QUESTIONS

How many kinds of contracts do we have?

Define an executed contract; give example.

Define an executory contract; give example.

Define a specialty contract.

Parol contract, expressed, implied.

What is meant by private seal, and what was its original object?

Does the seal serve any good purpose now?

Define bilateral and unilateral contracts.

Distinguish between an express and an implied contract.

What is a joint contract?

Which is the stronger, a verbal or written contract?

What is a joint and several contract?

If the meaning of a contract is doubtful, how will the court interpret it?

If printed and written part of contract differ, which will hold?

Does custom aid in construing contracts?

Must the contract as a whole be consistent?

CHAPTER VI

DAMAGES FOR BREACH OF CONTRACTS

103. Contracts are regarded by the law as solemn obligations which are made to be performed and not to be broken. Every person has perfect liberty in the matter of contracting, but once having entered into a lawful agreement no man can wilfully abandon it except at his own peril.

The law will not usually compel a person to perform the contract against his will; but an action against him for damages will be sustained unless some good reason can be shown for its nonperformance. If you contract to work for me six months for a certain salary and sickness prevents you from completing the engagement, you would have a good reason for nonperformance of your contract, and would not be liable for damages; but this rule does not hold except in cases where you are expected to do the work personally. If it were a contract for building an irrigation ditch where you would be presumed to employ others to do the labor, your personal sickness would not generally excuse you in case you failed to have the contract completed in the time specified.

104. **Amount of Damages.**—In case of damages for breach of contract the amount of such damages must be determined with justice, and as a rule nothing more can be collected than the actual loss sustained by the plaintiff. Suppose you lease a store room from A at $50 per month, but after using it two months you find business unprofitable and move out. It is now A's duty to use every effort to rent the store to some other party, and you will be liable only for the actual loss he sustains on account of the change. If he can rent the room for $40 per month you will then be liable for only $10 per month, but if he can not rent it at any price, you will have to pay the full amount named in the lease.

105. **Specific Performance.**—In some cases the payment of money as damages for the breach of a contract will not answer the purpose, and the law is satisfied with nothing less than a specific performance of the agreement itself.

Contracts for the sale of real estate belong to this class, and the courts will enforce them by compelling a conveyance of the property.

106. **Must Perform Entire Contract.**—The general rule of the law is that those who contract to deliver a certain amount of property or to perform certain labor or services must carry out the entire obligation. If

they perform only a part of the services or deliver only a part of the goods, they will not be entitled to any compensation whatever. For example, you contract with A to deliver to him by a certain day five hundred bushels of wheat. Under this rule if you deliver only four hundred ninety-five bushels you lose it all, and A keeps same without paying you anything.

Again, if you agree to work one year for A at an annual salary of $1,000, and work only eleven months you would not be able to collect any part of the salary.

This rule would not apply where the salary was a certain price per month, and the decisions of the courts in recent years are rather against the whole rule, especially in extreme cases, as it seems now to be regarded as too severe. Mr. Sedgwick in his work on the Measure of Damages says, "The rule of damages in actions for breach of contract is now generally regulated by the discretion of the court, according to fixed principles, and the courts will not allow an unconscionable (unreasonable) recovery."

107. **Liquidated Damages.**—When the amount of damage for a breach of contract is agreed upon at the time the contract is made it is called *liquidated damage*. Dr. A sells his office and good will to Dr. B for a certain sum and agrees not to practice in the same

locality again for five years. He further agrees in case this contract is broken he will pay to Dr. B the sum of $2,000 damages. This is called liquidated damages. In all cases where damages are demanded and the amount of same was not agreed upon when the contract was made, they are called *unliquidated damages.*

108. **Exemplary Damages.**—The general rule is that a person breaking his contract is liable for damages only to the amount of the actual loss sustained by the injured party; but in cases where there is some wilful or malicious wrong committed the law will compel the payment of a greater amount than the real loss. This is known as *exemplary damage,* and the additional amount paid is called "smart money."

CHAPTER VII

LEGAL REMEDIES

109. For many years it has been the boast of the law that no wrong exists which has not a legal remedy.

If Mr. B fails to keep his agreement with you, if he fails to pay his note, if he refuses to pay you for your labor or services—in short, if he neglects or declines to do anything he has legally contracted to do, you have the right to bring suit against him for a breach of contract.

Likewise, if he injures you by some unlawful act, you have the right of action against him for the wrong done to you. This is called an *action in tort.*[7]

If a man commits a public wrong it is called a crime, and the same is punished under the criminal law.

110. **Steps.**—In order to enforce the collection of any debts through the courts it is necessary to follow the various steps given below:

1. Summons.
2. Trial.
3. Judgment.

[7] Tort is from the Latin *tortus* which means twisted or crooked; hence it has reference to any wrongful or crooked act.

4. Execution.
5. Levy.
6. Sale.

111. **Summons.**—The person bringing the suit is called the *plaintiff,* and the person against whom the suit is brought is known as the *defendant.* The first step in the action is to have the clerk of the court issue a summons, which should be served upon the defendant. This is, in effect, an official notice to him of the demands of the plaintiff. The date, place, and hour of the trial are given, also the amount for which he is sued, so that he may have an opportunity to be at the trial and make any defense he may desire.

112. **The Trial.**—The trial is conducted according to certain well known rules, and each party is given ample time and opportunity to present his side of the case. The law presumes at the outset that the defendant does not owe the plaintiff anything, and upon the one bringing the suit rests the burden of proof. In other words, the law presumes every man is innocent until he is proved guilty.

113. **Judgment.**—This is the formal decision of the court after hearing all the evidence and arguments in the case. As soon as the judgment is "entered" it becomes a part of the permanent records of the court.

A judgment in an inferior court is not necessarily

final, for usually an appeal may be taken to a higher court if either party desires it.

When you have secured judgment in an inferior court against the man who owes you, it usually becomes a lien upon all his real estate located in the county where the judgment is rendered, provided a transcript or copy of same be filed with the clerk of the district court. A copy may also be filed in any other county in the same state, when it will become a lien on all the defendant's real estate in that county.

Judgments continue in full force from five to twenty years, according to the laws of the different states (see table under "Statutes of Limitations"). They may be renewed any number of times, so that the person against whom a judgment is rendered may reasonably expect to be watched as long as he lives unless he pays the amount of same. No matter where he goes or how long he lives he will find the judgment will follow him.

114. **Execution.**—This is an order issued by the court to its executive officer directing him to seize the property of the debtor and convert the same into cash for the satisfaction of the judgment and costs.

It is customary to first make the demand upon the debtor himself, requesting him to pay the money or deliver sufficient property to meet the obligation.

115. **Levy.**—If the debtor refuses to deliver property to satisfy the judgment, the officer will at once seize any personal property he can find belonging to the debtor.

If the officer is unable to find any personal property belonging to him he will levy upon the real estate of the debtor.

116. **Sale.**—Property which has been seized by the officer for the satisfaction of a judgment claim, after being advertised according to law, is sold, generally by auction for the highest cash offer. The money received for same is applied, first, in payment of the costs; next to the claim, and if anything remains on hand it is paid to the debtor himself.

117. **Garnishment.**—It sometimes happens that the debtor himself has no property of any kind to satisfy the judgment, but Mr. A or some other person may owe him. In that case Mr. A will be called into court to testify as to the amount he owes the debtor, and a judgment will be entered against Mr. A in favor of the plaintiff for the amount due. This process is called "garnisheeing the debt of another."

118. **Attachment.**—The regular form of procedure by which a judgment is secured, execution issued, and property levied upon meets the requirements of ordinary cases; but a dishonest debtor might dispose of

his property and get out of the state before you could go through one-half the formalities of a law suit. In such cases the court will issue an attachment, and the officer of the court will be instructed to seize the property of the debtor at once. This is reversing the regular order, by issuing the execution or attachment first and having the trial, judgment, etc., afterward.

The court will not issue an attachment except in extreme cases, where it is clearly shown that the debtor is preparing to dispose of his property or in some way defraud his creditors.

119. **Defenses.**—Any reason or excuse a man may offer for not fulfilling his contract is called a defense. You make a contract with Mr. B to do a certain thing. Six months later he sues you for breach of the contract. You may or may not have a good excuse; that is for the court to decide; but the law will recognize any one of the following defenses if clearly proven:

1. Statute of frauds.
2. Statute of limitations.
3. Tender of payment.
4. Payment.
5. Performance.
6. Forfeiture.
7. Set-off.
8. Recoupment.

There may be other defenses, but these are the principal ones.

DAMAGES AND LEGAL REMEDIES

REVIEW QUESTIONS

What are damages?

How is the amount of damage ascertained.

May the specific contract itself be enforced?

If the contract is only partially performed, can anything be collected? State this rule fully.

Define liquidated damages.

Define exemplary damages.

What do you mean by legal remedies?

Name six steps which must be taken to collect a debt by law.

What is summons?

Who is the plaintiff?

Who is the defendant?

What is trial?

What is judgment?

When does a judgment become a lien on the defendant's real estate?

May a judgment be renewed?

What is execution?

What is levy?

What is sale?

What is garnishment.

What is attachment?

CHAPTER VIII

STATUTE OF FRAUDS

120. The Statute of Frauds is an old English law passed in 1677 during the reign of Charles II. The name is somewhat misleading, and it would be better understood if called "Statute to Prevent Frauds." The object of it was to prevent frauds and perjury by requiring certain contracts to be in writing.

In nearly all the states a similar statute has been enacted, with slight variation. We give herein the principal requirements of this law as enacted in Nebraska, which is practically the same in other states. The following classes of contracts are declared to be absolutely void, unless some note or memorandum of the contract is made and signed by the party to be charged.

1. For the sale of real estate or any interest in the same.

2. For the lease of land for more than one year.

3. If by its terms the contract is not to be performed within one year from the making thereof.

4. To answer for the debt, default, or wrongful acts of another.

5. Every agreement, promise, or undertaking made

upon consideration of marriage, except mutual promise to marry.

6. Every contract for the sale of goods or chattels for the price of $50 or more, unless:

1. Some part of the goods are delivered,
2. Some part of the purchase price is paid, or,
3. The sale is by auction.

7. Every special promise by an executor or administrator to answer damages out of his own estate.

121. **What is Sufficient Writing?**—It is not necessary that a long or formal contract be drawn in writing, but any brief statement on a slip of paper or in a memorandum book will do. It need not contain more than a few lines, provided it states the agreement as made, and is signed by the party who is held to the contract.

Suppose you buy from Henry Marten a lot of corn to be delivered in thirty days. To bind the contract and avoid the possibility of forgetting the terms you might enter the following in your memorandum book and have Mr. Marten sign the same:

I have this day sold to Mr. A three thousand bushels of good yellow corn at twenty-five cents per bushel. I hereby agree to deliver this corn in Grand Island before February 1, 1902, same to be paid for on delivery.

(SIGNED) HENRY MARTEN.

January 4, 1902.

It is not necessary that an agreement be signed by both parties, but only the one signing would be bound by it. In the above case you could hold Marten to the agreement, but he could not hold you.

If in a great hurry you might simply write:

Sold to Mr. A three thousand bushels yellow corn at twenty-five cents per bushel, to be delivered at Grand Island before February 1, 1902

(SIGNED) HENRY MARTEN.

Even this brief writing, if signed by Marten, would bind the contract, but it is much better to take plenty of time and make your agreement cover every point, for in this way you will many times avoid misunderstandings which otherwise so often occur.

122. **Sale of Interest in Land.**—The conveyance of land is a matter of great importance and often involves large sums of money. If verbal agreements were recognized by law in this class of contracts it would open wide the door to fraud and perjury. If contracts of this kind were entrusted to oral agreements, Mr. F, being a dishonest man, might testify that you agreed to sell him your farm for $3,000, when in reality it is worth $5,000. If this did not answer the purpose, he might bribe some other dishonest person to testify that he was present and heard you make the agreement.

The law, however, states clearly that not only must

the deed of transfer be in writing, but also any contract in which you agree to sell real estate. Suppose A contracts in the presence of several witnesses to sell you his house and lot for $1,000. You accept and agree to draw up the deed the next day and complete the transfer. If A changes his mind and refuses to sign the deed you have no remedy and can do nothing but accept his decision.

123. **Lease for More Than One Year.**—If long verbal leases were allowed it would have a tendency to encourage fraud; therefore the law says they must be in writing. Verbal leases are not limited in all states, however, to one year, some allowing two and a few even three years, as this matter is regulated entirely by the laws of each individual state. It should be remembered that an oral contract for the lease of land for one year is binding, even though the term of the lease does not begin for several months after making the contract. The time is counted from the time the lease begins and not from the date of the contract. Otho Imm leases to George Brown his farm on the 1st of January for one year, the term of the lease to begin the following March. This is binding though it is a verbal agreement.

124. **Not to be Performed Within One Year.**—All contracts must be written which by their terms are not

to be performed within one year from the making thereof.

It will be seen at a glance that this is not only a just provision, but one which will save much annoyance and many disputes. People are too forgetful to safely rely on their memories for the exact conditions of a contract which was made years before; therefore the law says that verbal agreements which by their terms are not to be performed within one year from date of same are void.

On January 1, 1903, you contract verbally with Mr. A to buy his horse for $50 on February 1, 1904. This agreement will not bind either party, as by its terms it is not to be performed within one year.

125. **Surety for Another Person.**—Every contract to answer for the debts, defaults, or misdoings of another person must be in writing. This is perhaps understood by fewer people than any other provision in the Statute of Frauds. It applies not only to cases growing out of contract, but out of tort also. You go into a store with me to buy a suit. I tell the merchant to sell you goods amounting to $20, and if you do not pay for the same I will. This is not valid unless it is in writing, as it is an agreement to answer for the debts of another. If I had told the merchant to sell you twenty dollars' worth of goods and I would pay

for same, that is binding, for then I am not surety for you, but I promise to pay it myself, and it is charged to me on his books. In this case you do not owe the merchant anything, and he can not collect it from you even though I fail to pay the bill.

You secure a position with a bank, and when they ask me about your honesty I tell them I will guarantee your honesty and faithfulness to duty.

This promise is not binding in law unless it is put in writing. A person who values either his word or reputation will, however, carry out all the guarantee he makes, whether they can be enforced by law or not.

126. **In Consideration of Marriage.**—Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry, is void, unless made in writing. This refers especially to what is known as marriage settlements. One of the parties about to wed sometimes promises to deed to the other certain real estate or turn over certain other property after the marriage; or parents of the bride or groom may make a similar promise; but such contracts must be in writing, otherwise they will be voidable. Our own country has furnished many deplorable cases within recent years where the daughters of some of our wealthiest citizens have married bank-

rupt lords or barons of Europe for their titles. In exchange for their empty titles these men demand enormous marriage settlements and insist that the contracts must be carefully drawn and agreed to before marriage.

127. **Personal Property Exceeding $50.**—Contracts for the sale of personal property for a price of $50 or more, are void unless:

1. Some part of the goods is delivered,
2. Some part of the purchase price is paid, or
3. The sale is by auction.

Most of the states have adopted this provision of the statute, but there is a slight variation as to the limit of the amount. The law of Nebraska fixes the amount at $50, and it is the same in most of the states.

Suppose I buy from you one hundred bushels of apples at $1 per bushel with the understanding that I will call for them in a few days and pay the price. This may be made binding by paying a small sum on the purchase price, say one dollar, or by receiving from you some of the apples; otherwise neither of us can hold the other to the agreement unless it is reduced to writing.

If the sale had been for $45, or any sum less than $50, a verbal contract would have been binding.

A part payment on any purchase is called giving something as an *earnest* to bind the bargain.

If the sale is by auction the verbal contract is binding upon the buyer even though the amount exceeds $50.

CHAPTER IX

STATUTE OF LIMITATIONS

128. All of the states of the Union have laws fixing the time in which a debt or claim will become outlawed unless sued within the time specified. These laws are called Statutes of Limitation, but are sometimes referred to as the Statutes of Repose. It is a presumption of the law that a claim which has run for a certain time has been paid; and to support this presumption and avoid litigation it deprives the creditor of the right to sue after a certain number of years.

When a debt is outlawed it is said to be "barred by the statute of limitation."

129. **Moral Obligation.**—It should be remembered that the Statutes of Limitation do not make the debt void. They simply make it impossible to collect the claim by a suit at law, but this does not in the least remove the moral obligation.

Suppose you owe a bill at a grocery store in Nebraska and through unfortunate circumstances you are unable to pay the same within four years, at which time the bill becomes outlawed. The merchant has favored you by letting the account run without suit, and it would be very ungrateful as well as dishonest

on your part to refuse to pay him simply because the law does not compel you to do so.

130. **Mental or Legal Disability.**—If a person is disqualified by minority, mental disability, or imprisonment from bringing suit at the time the debt becomes due, the Statute of Limitation does not operate against his claim during the time he is disqualified. After the disability has been removed the person so disabled may bring suit within a certain limited time specified by the statutes of the several states.

The general rule seems to be that the disability must exist at the time the debt becomes due, and then so long as the disability continues, the statute has no effect. If, however, the limitation begins to run, it continues without regard to any subsequent disability. This rule does not apply to all the states, but is given by Parsons as the general rule.

To illustrate: you owe A on a note which is due January 10. On January 9 A becomes insane. His claim against you would not become outlawed as long as he remained insane, but if he recovers a month later, then the statute would begin to run against the debt and would continue without interruption even though A should again lose his mind.

131. **While Out of the State.**—The Statute of Limitation does not usually count against a debt while the

person owing the debt is outside the state in which it was contracted.

Some dishonest people think if they leave the state for a number of years they can in that manner outlaw all their debts, but they are often surprised on returning six or eight years later to learn that their debts are all in as good legal standing as when they left the state.

132. **When the Time Begins to Run.**—The Statute of Limitation may be said to run from the first day that suit could have been commenced on the debt. In case of a note, it would begin as soon as the note was due, that is, at the end of the third day of grace. If any payments were made on the note the time would then count from the date of the last payment. If the note be payable on demand it will count from date of same. On open accounts the time begins with the last item in the bill.

133. **How a Claim May be Revived.**—A claim that has been barred by the Statute of Limitation may be revived in two ways: (1) by giving an express promise to pay the debt; (2) by making a voluntary payment on same.

In either case the statute would again commence to run from the day of the payment or the new promise. A number of the states will not recognize this

promise as a revival of the debt unless the same be made in writing.[8]

It should be remembered that no one can make a partial payment on a note or debt that will revive it, except the debtor himself. The holder of a note that is barred by the Statutes of Limitation would be glad to endorse a small payment on it if that would renew same; but the law will not recognize such payment by any one except the debtor himself.

134. **What Constitutes a New Promise.**—The promise made to revive an outlawed debt should be clearly expressed, but it may be conditional. For example, a man may promise to pay "when I am able," and this will revive the debt, provided it can be proven, not only that the promise was made, but also that he is able to pay it.

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[8]California, Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, South Dakota, Utah, Vermont, Washington, West Virginia, Wyoming.

TABLE OF LIMITATIONS

STATE	Open accounts	Contracts in writing	Sealed instruments	Judgments
Alabama	3	6	10	20
Arkansas	3	5	5	10
Arizona	3	5	5	5
California	2	4	.....	5
Colorado	6	6	6	6
Connecticut	6	6	17	20
Delaware	3	6	20	20
District of Columbia	3	3	12	12
Florida	2	5	20	20
Georgia	4	6	20	7
Idaho	4	5	5	6
Illinois	5	10	10	20
Indiana	6	10	10	20
Indian Territory	3	5	.....	10
Iowa	5	10	10	20
Kansas	3	5	15	5
Kentucky	2	15	15	15
Louisiana	3	5	10	10
Maine	6	6	20	20
Maryland	3	3	12	12
Massachusetts	6	6	20	20
Michigan	6	6	10	10
Minnesota	6	6	6	10
Mississippi	3	6	6	7
Missouri	5	10	10	10
Montana	3	8	8	10
Nebraska	4	5	.....	5
Nevada	4	6	6	6
New Hampshire	6	6	20	20
New Jersey	6	6	16	20
New Mexico	4	6	6	7
New York	6	6	20	20
North Carolina	3	3	10	10
North Dakota	6	6	6	10
Ohio	6	15	15	26
Oklahoma	3	5	5	5
Oregon	6	6	10	10
Pennsylvania	6	6	20	20
Rhode Island	6	6	20	20
South Carolina	6	6	6	20
South Dakota	6	6	20	20

TABLE OF LIMITATIONS—*Concluded*

STATE	Open accounts	Contracts in writing	Sealed instruments	Judgments
Tennessee	6	6	6	10
Texas	2	4	4	10
Utah	4	6	6	8
Vermont	6	6	8	8
Virginia	2	5	10	10
Washington	3	6	6	6
West Virginia	5	10	10	10
Wisconsin	6	6	20	20
Wyoming	8	5	5	5

Simply acknowledging the debt will not revive it. In a prominent case before the United States Supreme Court one of the partners of a firm said to the plaintiff, "I know we are owing you; I am getting old and I wish to have the business settled." It was held by the court that this was not a promise to pay the debt.

So in New Hampshire in an action on a note, the defendant on being asked to pay the note said, "I guess the note is outlawed, but that makes no difference, as I am willing to pay my honest debts." It was held by the court that this promise was not sufficient to revive the debt.

135. **Where There Are Two Signers.**—When two or more parties sign a note or contract it may become outlawed as to one or more of them and not as to the

others. One might make a new promise or a payment; but that would not bind the others.

Suppose you hold a note against A & B, which is long past due, and it will be barred by the Statute of Limitation January 15. B comes in January 10 and makes a payment on same. This gives it a new lease of life, and it can now run five years longer before becoming outlawed as to B; but unless A makes a new promise or pays something he will be released on January 15. If a note has been outlawed, a new promise by one of the signers will revive it as to the promisor, but will not bind the other signers.

STATUTE OF FRAUDS AND STATUTE OF LIMITATIONS

REVIEW QUESTIONS

What is Statute of Frauds?

Name seven kinds of contracts that must be in writing.

What is sufficient writing?

What is meant by paying an earnest?

What is the Statute of Limitations?

Is there any moral obligation to pay an outlawed debt?

Do the Statutes of Limitation run while the debtor is out of the state?

When does the time begin to run?

How may a claim be revived?

What constitutes a new promise?

In what time does an account outlaw in your state?

In what time does a written agreement outlaw in your state?

May a note outlaw as to one of the signers and not as to the other?

Does a revival of the claim as to one of the signers revive it as to both?

CHAPTER X

LEGAL TENDER

136. Tender, when spoken of in a legal sense, means the offer of money or any other thing in satisfaction of a debt. If the offer is made so as to conform in every way with the law it is called a legal tender.

137. **Payment in Money.**—If you owe any debt payable in money, it must be paid in the kind of money which the law recognizes as legal tender.

The Constitution of the United States gives to Congress alone the power to determine what shall be legal tender, and it has provided that the following moneys shall be used as such:

1. Gold coin, and silver dollars containing 412½ grains, in any amount.

2. Treasury notes, in any amount.

3. Greenbacks for any amount and any debt except duties on imports and interest on public debts.

4. Silver coin smaller than one dollar in amounts not exceeding ten dollars.

5. Nickels, three cent pieces, and coppers not to exceed twenty-five cents in one payment.

The so-called trade dollar containing 420 grains is not a legal tender.

138. **The Effect of Tender.**—The fact that legal money has been tendered in payment of a debt and refused, does not discharge the obligation, but the debtor must stand ready at any time thereafter to pay the amount over to the creditor. Suppose you owe Mr. B, according to your books, $50, but he insists that you owe him $75. You make him a legal tender or offer of $50, but he refuses it and sues you. You must bring into court the identical money tendered him and prove that you not only offered it to him without conditions, but that you have been in readiness to pay him ever since the tender was made and are willing to pay him there in court if he will accept the $50. If Mr. B does not secure judgment against you for more than $50 he must pay all costs, and you will not have to pay interest for any time after the tender was made. If he secures judgment against you for more than $50 you will have to pay all costs.

139. **National bank notes** are promissory notes issued by the national banks under the direction and supervision of the United States government. These notes are in very common use and are accepted everywhere, but they are not legal tender, and no one could be compelled to take them against his will. They are good tender, however, and circulate freely as money.

They are discussed more fully under the head of "Banks and Banking."

140. **Manner of Tender.**—In order to constitute a *legal tender* there must be no conditions attached to it. It will not do to say you have the money in your pocket or in the bank and will pay him if he will take it; but you must produce the legal money and offer it to the creditor. A check or draft will not answer the purpose.

141. **Exact Amount.**—The money tendered must be of the exact amount of the debt, or if it be more you can not demand that any change be returned, as that would make it a conditional offer. You can demand a receipt for the money paid, and in case you are paying a note or draft you can insist on having the same returned to you.

142. **Chattels.**—If a debt is payable in chattels or personal property it is the duty of the debtor to be present either in person or by agent at the appointed time and tender the exact kind and quality of property called for in the contract. If you owe Mr. A fifty bushels of apples of a certain kind and quality to be paid in October, and you tender same to him according to the exact terms of the contract and he refuses them, the debt is thereby canceled, and the right of property in the apples passes to Mr. A. You may

abandon the apples offered, or if you desire to retain possession of same it will be at the risk and expense of Mr. A.

It will be noticed that a tender of money in payment of a debt does not discharge same, but the rule is different when the debt is payable in chattels. In the illustration given above, your apples are ripe and in condition to deliver in October, and it would be unreasonable for him to refuse to take them at the date agreed upon and then demand them the next July.

Your apples perhaps would not keep until that time, and if they did, it would increase your expenses and labor; besides they would by that time be worth probably two or three times as much as they were in October.

CHAPTER XI

PAYMENT

143. **What is Payment?**—Payment may be defined as discharging some debt or obligation. This may be done by paying the cash, by delivering some goods or chattels, by performing some labor or services, by transferring an account, by giving a note, or in fact by any lawful method that may be agreed upon between the debtor and creditor. It should be remembered, however, that the law recognizes no payment except money unless by special agreement.

144. **Payment in Property.**—A debt may be paid in property if it is so stated in the agreement; but the property must be delivered in strict accordance with the contract, otherwise the creditor may refuse it and demand the money. Even when a contract is made payable in money, if the debtor and creditor mutually agree to settle it by the payment of chattels or personal property, it is valid and will cancel the debt, even though the chattels are not worth the amount of the debt.

145. **Payment by Note.**—Giving a note for a debt does not pay the debt unless it is expressly agreed that it shall do so. Brown buys from you $100 worth

of goods and gives you his note in settlement. This does not pay the debt unless it is so agreed. It may have the effect of postponing the payment of the account until the maturity of the note.

If you should sell Brown's note without guaranteeing it, then it would be regarded as payment for the goods, even though he dishonor it when due. If it were not considered as payment, you could collect the bill from Brown again and would be receiving twice the amount of your bill.

146. **Money Sent by Mail.**—If you send money by mail to Smith, and it is lost and never reaches him, the law will regard this as payment, provided Smith requested you to send it by the method used. You must exercise great care to see that the letter is properly addressed according to his instructions, well sealed, and placed in the post-office; then if it miscarries or is lost Smith is the loser and not you. It may be well to add here that it is never safe to send money in an ordinary letter, for if it is lost or stolen the government will not stand responsible for it. Even a registered letter is not perfectly safe, as the government will become responsible for it only to the amount of ten dollars in case it is lost in the mails. The proper way is to send a money order or bank draft or express order, and

then if the same is lost you can have another issued without cost.

147. **Note of Third Party.**—If the debtor agrees to accept the note of a third party in settlement of a debt it will be recognized by the law as full and valid payment of the obligation, and even if the note is never paid the creditor can recover nothing more for the claim.

148. **Part Payment.**—As a general rule the part payment of a debt, the exact amount of which is known and admitted, will not discharge the entire debt, even though the creditor agrees that it shall. You are owing Crooks $100 and go to him the day it is due and offer him $90 in full settlement. He accepts same and gives you a receipt in full, and yet he has the legal right to sue you the next day for the other ten dollars. There has been no consideration pass between you for the ten dollars, and it will not stand in law. If the part payment was made before maturity, or if the amount due was in dispute, then if the creditor agreed to take less than face value of claim it would be regarded as discount or a compromise and would pay the debt in full. In fact most any kind of an agreement between debtor and creditor to settle a bill by part payment will stand, if some reason can be shown why the discount was given.

149. **A Check in Payment.**—Giving a check is not, as a rule, considered payment of a debt, if the check is not honored on presentation. A gives you a check of a third party in payment of a note you hold against him, and you cancel and surrender the note; but if the check is dishonored this will not be regarded as payment unless it was expressly stated that it should be.

150. **Counterfeit Money.**—If a man owes you on a note or account and in paying the same gives you counterfeit money, this is not, in the contemplation of the law, payment, and the fact that both of you thought the money good makes no difference, but you should return the money to him within a reasonable time after discovering same to be counterfeit. The same rule applies to forged checks, notes, or bills of any kind.

151. **Presumption of Payment.**—There are certain conditions under which the law will presume that a debt has been paid, and therefore in such cases the one owing the debt does not need to prove that he paid it, but the burden of proof rests upon the creditor to show that it has not been paid. The most common cases of this kind are as follows:

1. Possession by the debtor of his note or agree-

ment which was given the creditor at the time of the contract.

2. Possession of an order or draft by debtor.

3. Possession of a receipt by debtor.

4. Lapse of time.

5. Certain subsequent dealings between the parties.

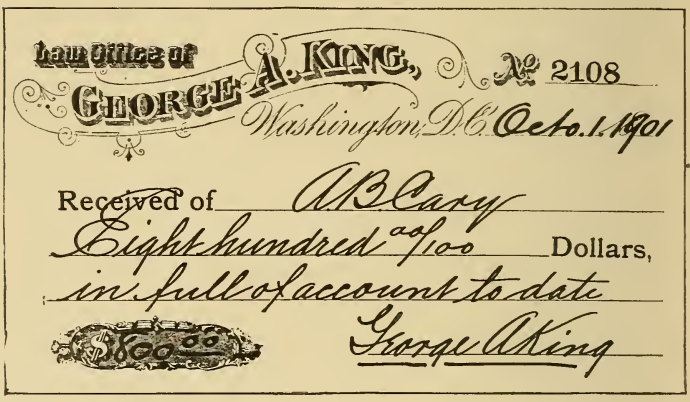
152. **Possession of Draft, Note, etc.**—If Jones sues you for the amount of a promissory note and at the trial you produce the note which was given him, even though it be not canceled or marked paid, the law will presume that you have paid it, and the same is true of a draft or order of any kind. If Jones can show by acceptable evidence that you got possession of the note in some illegal way, and that it has not been paid, you will be held liable for same.

153. **Possession of a Receipt.**—Being in possession of a receipt for money or goods furnishes a strong presumption that the money has been paid or goods delivered, but it may sometimes be explained in such a way as to make it of no effect. For example, you send a receipt to Mr. A by some inexperienced person, and tell him to collect the money from A and deliver the receipt, but he simply gives A the receipt without getting the money. Again, employees of large corporations, as a matter of convenience, are often required to sign the pay roll before receiving their pay,

but these receipts do not bind them unless they get their money.

154. **Lapse of Time.**—When no suit has been commenced for the collection of a debt for a certain number of years, the law presumes that the debt has been

No. 6—Receipt in Full of Account



paid (see table of limitations). This is a just law for the reason that witnesses may move away or die, so as to make it difficult to prove the payment if allowed to run for any considerable number of years.

155. **Application of Payment.**—If a debtor is owing the creditor more than one debt growing out of different transactions, the question arises, to which debt must the payment be applied. If the debtor indicates which one he wishes it applied upon, the creditor must follow instructions, but in the absence of any instruc-

tions the creditor may apply the payment on any of the debts. He may even apply it on a debt that is already outlawed, but such payment will not revive the balance of the outlawed debt, for the reason that the debtor has made no new promise to pay it, and this is always required to revive a debt.

156. **Performance.**—The defendant in a suit may plead as a defense that he has performed the contract or as much of it as was agreed upon. He must not only show that the thing has been done, but that it was done at the time, place, and in the manner provided in the agreement.

157. **Set-off.**—A set-off is what is sometimes called a counter-claim. If A sues you for $50, you may offer as a defense that he also owes you. It may be that he owes you more than $50 and in that case the court would give you a judgment against A.

158. **Recoupment.**—This is very similar to the set-off, with the exception that in recoupment the claims on each side must arise out of the same transaction, and in a set-off that is not necessary. In a set-off it is one debt of any kind against another of any kind, but in recoupment it is claiming a discount or deduction because of some defect.

LEGAL RULES OR MAXIMS

Ignorance of the law excuses no one.

No one is bound to do what is impossible.

Every one is considered innocent until he is proven guilty.

No one is responsible for inevitable accidents.

No man is competent to be judge in his own case.

Let the purchaser beware.

The day begun is held to be completed.

It is fraud to conceal a fraud.

Laws are adapted to those cases which most frequently occur.

The law does not notice trifling matters.

What I can not do in person I can not do through the agency of another.

LEGAL TENDER AND PAYMENT

REVIEW QUESTIONS

What is a legal tender of money?

Name the different kinds of legal tender money.

What is the effect of a tender of payment?

If money is offered in payment of a debt and the same is refused, does that cancel the debt?

How does the rule in above questions apply to debts that are payable in chattels?

What is meant by payment?

Does giving a note for a grocery bill cancel the bill?

Who is responsible for money sent by mail in an ordinary letter?

If counterfeit money is accepted in payment of a debt, does that cancel the claim?

Is the possession of a receipt positive proof that the money has been paid?

In the absence of instruction, how shall money be applied when the payor owes you several different bills?

What is a set-off?

What is recoupment?

CHAPTER XII

NEGOTIABLE PAPER

159. The most common forms of negotiable paper are the national bank notes, checks, drafts, and promissory notes.

The use of negotiable paper in business has become so extensive that this chapter is deserving of special study; in fact, it may be regarded as among the most important chapters in commercial law.

160. **Definition.**—A negotiable paper is a written instrument which may be transferred from one person to another for value. The buyer may sue the same in his own name, as if the maker had given it to him direct, and it is free from all defenses which might have existed against it in the hands of the original holder.

Negotiable paper is intended in one sense as a substitute for money, and it must be drawn in such form and protected by such laws that the public will feel a perfect confidence in accepting the same. Of course the purchaser of a note or draft must satisfy himself as to the responsibility of the makers before buying it. Checks given by well known persons, bank drafts, bank bills, certificates of deposit, money orders on

express companies, postal money orders, and postal notes all pass among business houses the same as money.

161. **Essential Elements.**—There are seven essential elements which must be possessed by every negotiable paper, and if one of them is missing, the paper is deprived of its negotiable character. They are as follows:

1. Parties.
2. In writing.
3. Payable in money.
4. Payable absolutely.
5. Negotiable in form.
6. Time.
7. Amount.

162. **Parties.**—The parties to a negotiable note or paper may be separated into (1) original, (2) subsequent.

163. **Original Parties.**—The original parties to a negotiable instrument are the ones whose names are found on the face of the paper and who are interested in it at the time it is made.

In form No. 7, F. E. Slusser and H. H. Phillips are the makers and the Security National Bank is the payee, the three being the original parties to the note.

164. **Subsequent Parties.**—If the Security National

L. of C.

Bank endorses its name on the back of this note, it can then sell it to any other person, who in turn may sell it to some one else, and so on; thus it may be transferred to half a dozen people before it becomes due.

Every person through whose hands it passes, except those named in the face of the note, are subsequent parties.

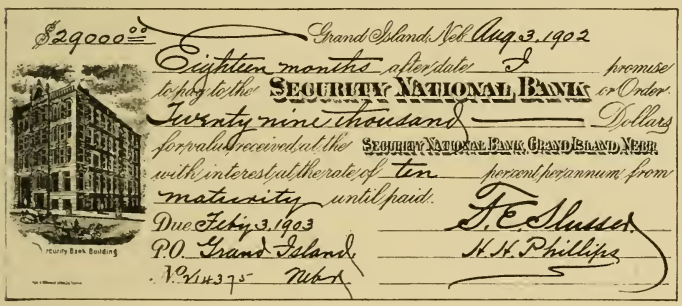
165. **In Writing.**—Every negotiable instrument must of course be either written or printed or both. Any language may be used, and if the signer is unable to write he may simply make a mark for his signature, thus: Richard $\overset{\text{HIS}}{\underset{\text{MARK}}{\times}}$ Dunn.

Instruments which are signed by a mark should be witnessed. Most people use a printed form and fill in the date, names, amount, etc., with a pen. Ink should always be used, although a note or any negotiable paper written with a pencil is valid.

166. **Payable in Money.**—A negotiable instrument must be payable in money and not in goods or chattels. If payable in anything other than money, it loses its character as a negotiable paper and becomes a mere contract.

167. **Signature of Maker.**—It is not necessary that the signature should be affixed at the bottom of the instrument, although this is the customary form. It may be at the top, in the middle, or on the back, or in fact any place on the paper, so long as it is clear from the appearance of the note or bill that the signer intended to bind himself for the payment of the same. *Example.*—"I, George P. Larson, promise to pay

No. 7.—Joint and Several Note



Henry Brown or order Twenty Dollars on the first day of January, 1903."

This note would be perfectly good provided Larson wrote it or authorized some other person to write it for him.

The signature may be either written, printed, or stamped, just so it is the adopted signature of the maker. It may consist of the full name or initials only, and it may be affixed by the maker himself or his authorized agent.

In a few states[9] notes payable in specific chattels are negotiable, but this is not the general rule.

168. **Payable Absolutely.**—It has been said that a negotiable paper "is a courier without luggage"; in other words, there must be no conditions or contingencies, but it must consist of a positive promise to pay or a definite request for some one else to pay a certain sum of money. This is not strictly true in every case, as there are some contingencies which are admissible.

169. **Contingency.**—If a note is made payable on condition of the happening of some particular event, that event must be something which is *sure* to happen; otherwise the note is not negotiable, although it may be a binding contract as between the original parties. A note made payable three months after the death of a certain person would be negotiable, for, while the date of maturity is uncertain, death is sure to come sometime.

On the other hand, suppose the note is made payable three months after the marriage of the signer, or payable out of the funds to be received from the sale of certain property. Such notes are not negotiable, for the maker of the note may never get married or the property may never be sold by him.

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[9] Alabama, Illinois, Indiana, Iowa, Kentucky, Minnesota, Montana, Virginia.

170. **Negotiable Words.**—By this is meant that the paper shall contain some words to show that it was the intention of the maker that the instrument should be transferred from one person to another and not of necessity to be retained by the original holder. To show this, it is customary to use the words "bearer," "or bearer," "or order," "or assigns." A note or paper payable to "bearer" or to "Frank Smith or bearer" is transferable from one person to another by mere delivery to the purchaser, but if a note is payable to "C. D. Searson or order" it must be endorsed by Mr. Searson; otherwise it will not be negotiable.

171. **Time.**—This has reference to the time of making the paper and the date of maturity. It is not absolutely necessary that the paper should be dated, but it is much better and more convenient for several reasons: 1. If the note or bill draws interest, the date will be needed in order to compute the amount. 2. It may be necessary to know the date so as to determine when the paper becomes outlawed. If a note or bill is drawn without date it will be presumed to be dated on the day of delivery.

172. **Maturity.**—The maturity of a bill, that is, the date it becomes due, should be carefully stated, or at least the information given which will enable the holder to easily determine the date. It may be due

"on demand," "—— days after date," "at sight," or "—— days after sight."

When no time is stated the paper is presumed by law to be payable on demand.

The following are some of the most common forms for fixing the maturity of notes:

"I promise to pay on demand," etc.

"I promise to pay ten days after demand," etc.

"I promise to pay at sight," etc.

"I promise to pay ten days after sight," etc.

"I promise to pay ten days after date," etc.

"I promise to pay December 1, 1903," etc.

"I promise to pay on or before December 1, 1903," etc.

173. **Amount.**—A note or bill is not negotiable unless the amount is clearly stated. "I promise to pay J. L. Traynor one hundred dollars and all other sums due him."

This would not be negotiable, as it does not fix the amount definitely. The amount is usually expressed both by words and marginal figures, but this is not absolutely necessary.

174. **Amount in Writing.**—The amount for which the bill is given should be plainly spelled out in the body of the instrument, for the marginal figures can scarcely be called a part of the contract; but are

placed there as an aid in reading bad writing and poor spelling.

175. **Discrepancies.**—Should it happen that the amount of a note or bill expressed by the written words differs from the figures, the law will presume the writing to be correct; but of course a careful person would refuse to take a paper where there was an important difference in the amounts given.

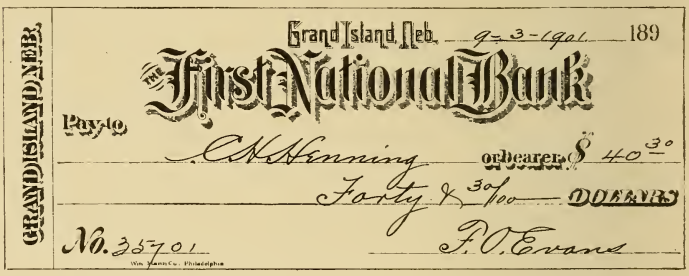
176. **Misspelling.**—While incorrect spelling is regarded as a sure indication of ignorance, the law looks only at the intention of the parties, and if the words are misspelled in a note or bill it does not injure the legal standing of the paper, provided the meaning is clear. We were recently shown a promissory note in which the signer promised to pay "atey wun dolers." While this was a rather severe blow at the rules of spelling, there could be no doubt as to the amount of the note.

177. **Carelessness.**—Many people are very careless about filling out notes, checks, or drafts. One of the most common faults is to begin writing the amount of the check or note in the middle of the line, as shown in illustration No. 8. A check filled out in this manner is an easy mark for any forger into whose hands it may fall. He has only to write any amount he de-

sires to the left of the word "forty" and place a corresponding figure in the margin.

To avoid this danger always place your figures near the dollar mark and begin writing the amount at the extreme left edge of the paper. See form No. 14.

No. 8.—Check Showing Common Error



CHAPTER XIII

CLASSES OF NEGOTIABLE PAPERS

178. Having briefly considered the essential elements of negotiable papers, we will now take up the different classes which are in most common use and describe them separately. By far the oldest is the *bill of exchange,* or what is more generally called the *draft.*

179. **Draft or Bill of Exchange.**—A draft or bill of exchange is simply a written request in which one individual asks another to pay a certain sum of money to a third person. They are of two kinds, inland and foreign.

180. **Inland Bill.**—An inland bill of exchange is one where the drawer and drawee both live in the same state or country.

181. **Foreign Bill.**—A foreign bill of exchange is one where the drawer and drawee reside in different countries or states.

A draft drawn by any person in the United States on some one in London would be a foreign bill of exchange, and the same would be true of a draft drawn by a Grand Island man on any one in Denver, Colorado.

It was formerly the custom, when drawing a bill of exchange on a foreign country, to draw them in sets of three, all being alike except in number. They were then sent by different routes and the first one reaching the destination would be paid, the others to become void. This custom is now almost entirely abandoned, as it seems to serve no good purpose.

182. **Convenience.**—The draft or bill of exchange is the most important negotiable instrument known to the commercial world. It not only takes the place of money to some extent, but in many cases it is far more convenient.

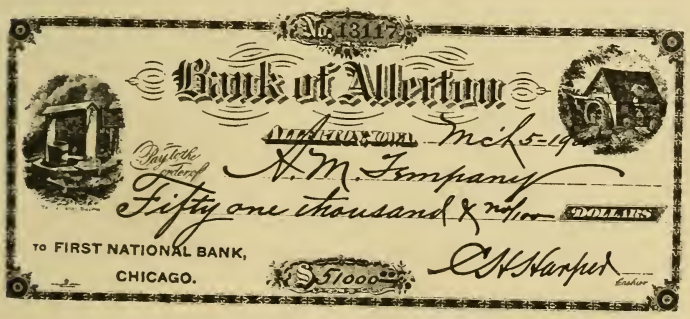
Suppose W. J. Hynes has 100,000 bushels of wheat in New York which he has just sold to F. S. Smith & Co., of Liverpool, at $1 per bushel.

He ships the wheat, and at the end of one month receives in gold $100,000, but he must pay for transportation, insurance, etc., on the gold, something like $500, and he has been without the use of the money for thirty days, which, at 6 per cent, would be another $500. This would be the cheapest method under the old system; but by using the draft Mr. Hynes can load his wheat on board the boats, and then draw a draft on Smith & Co. for $100,000. This he can attach to his bill of lading and cash the same at the bank before the wheat has left the wharf. But this is not all, for

the banker will often pay one-fourth of 1 per cent premium, which would amount to $250, making a net gain to Mr. Hynes of $1,250 by using the draft.

The banker of course does not have the $100,000 shipped from Liverpool to New York, but simply sends the draft to another bank in Liverpool and has same collected and placed to its credit. Perhaps the next day some large importer in New York buys a bill of goods in England amounting to $100,000, and he wishes to save the expense of shipping so much money,

No. 9.—Bank Draft



so he goes into the bank and buys a draft on Liverpool for $100,000 at a premium of $450, and sends same by mail to pay his bill. By this plan the money that should have been shipped to New York to pay for the wheat remains in Liverpool and pays for the goods purchased by the importer.

It will be seen that Hynes, the grain man, made a

profit by the draft, the bank made a profit of $200, and the importer saved considerable money, yet not a dollar was shipped either way.

The only case in which it is necessary to ship money from one country to another is when the imports and exports are unequal. If we buy more from English merchants than we sell to them, we must send the difference in gold; but if we sell to them more than we buy, they must send us the balance in gold.

All that has been said above applies with equal force to trade between the different states in the Union.

No. 10.—Foreign Bill of Exchange

£1,000. New York, Jan. 1, 1902.

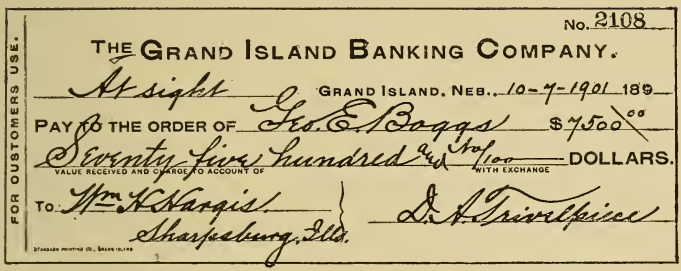
At ten days sight pay to the order of the
Chemical National Bank of New York
One Thousand Pounds Sterling,
value received and charge to the account of
W. J. Hynes.

To F. S. Smith & Co.,
Liverpool, England.

183. **Parties to a Draft.**—In the above bill of exchange W. J. Hynes is the drawer, F. S. Smith & Co. the drawees, and the Chemical National Bank the payee. Sometimes the drawer makes himself the payee and then endorses it over to a third party.

Drafts are always payable in the currency of the country on which they are drawn.

No. 11.—Sight Draft


FOR CUSTOMERS USE.

No. 2108

THE GRAND ISLAND BANKING COMPANY.

At sight GRAND ISLAND, NEB., 10-7-1901 189

PAY TO THE ORDER OF Geo. E. Boggs $7500.00

Seventy-five hundred and No/100 DOLLARS.

VALUE RECEIVED AND CHARGE TO ACCOUNT OF WITH EXCHANGE

TO Wm H Hargis, Sharpsburg, Ills. D. A. Trivelpiece

184. **Time.**—The above draft is called a Sight Draft because it is payable at sight. Many of the states, however, allow three days of grace on even a sight draft. If a draft reads "ten days sight" it is a time draft and payable ten days after presentation.

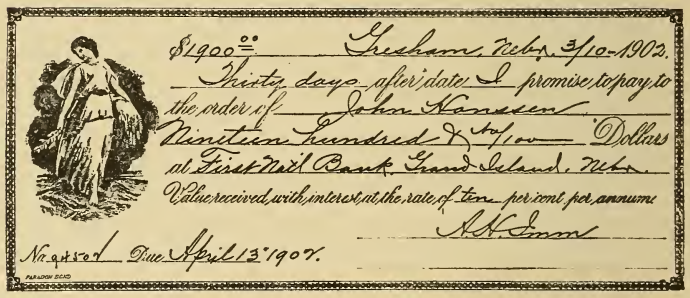
185. **Acceptance.**—Every draft payable a certain number of days after sight, also sight drafts in states where days of grace are allowed on them, should be presented for acceptance. A draft is accepted by the drawee writing across the face of it "accepted," "good," or words of similar meaning, followed by the date and his name.

It will be seen by form No. 19 that S. C. Hawthorne had promised nothing in the draft, and in fact had nothing to do with it until it was accepted by him. Had he refused to accept or pay the draft, that would

have been called dishonoring it. In that case S. D. Nixon, the drawer, would have been held for payment.

186. **Promissory Notes.**—As before stated, the draft is the oldest form of negotiable paper and in fact the only one known to common law, and the note is made negotiable by statute. A promissory note is a written promise of one person to pay another a certain sum of money at a specified time.

No. 12.—Promissory Note


$1900.00 Gresham, Nebr. 3/10-1902.
Thirty days after date I promise to pay to the order of John Hanssen
Nineteen hundred & 00/100 Dollars
at First Nat'l Bank, Grand Island, Nebr.
Value received with interest at the rate of ten per cent per annum
A. H. Emm
No. 94504 Due April 13 1907.

187. **Parties.**—There are two original parties to any promissory note, the maker and the payee. The maker is the one who signs it, while the payee is the one to whose order the note is payable.

188. **Joint and Several Notes.**—If a note reads, "We promise to pay," and is signed by two or more persons, they are held jointly or all together for the payment of same; but if it reads, "I promise to pay" or "We or either of us promise to pay," then each

signer becomes individually liable for payment of the whole note, or they may all be sued together, just as the holder sees fit. See form No. 7.

189. **Negotiable Words.**—The words "bearer," "or bearer," "or order," "or assigns," must appear in every negotiable note; but a few states require certain peculiar words to make a note negotiable. In Alabama, Indiana, and Virginia they must be payable at some bank. In Arkansas every note must be made payable "without defalcation." In Missouri the words "for value received" must be used.

190. **Accommodation Note.**—This is a note given purely as a matter of accommodation. I wish to borrow $500 at a bank, but the bank does not care to take my note for that amount. You, being a large property owner and an intimate friend of mine, are willing to help me; so you give me your note of $500 as a matter of accommodation, with the understanding that I will endorse it and then sell it to the bank. This enables me to raise the money, but you expect me to pay the note when it falls due. If I fail to do this, however, you will be responsible for it.

While the bank or any other purchaser could enforce the collection of such a note against you, I would not be allowed that privilege, as there was no consideration for the giving of same. If you had to pay the

note at maturity, you would of course have the right to recover the amount from me.

191. **Is a Debt Paid by Giving a Note?**—A negotiable note given in settlement of an existing debt is held to be payment in full of the original debt or account, provided there is no agreement to the contrary. If, however, a non-negotiable note is given, the law will presume that there was no intention that it should act as a payment of the original debt unless it is specially agreed that it shall do so.

192. **Judgment Note.**—In Illinois, Ohio, and Pennsylvania, judgment notes are in common use; also in New Mexico and Wisconsin, where the statutory requirements are complied with as to the confession of judgment. As will be seen by form No. 13, it contains not only the promise to pay, but also includes a confession of judgment for the amount due.

193. **Advantage of Judgment Notes.**—A judgment note has great advantage over an ordinary note, especially when the signer is about to fail in business and it is desired to act quickly, as it requires but a short time to bring suit, secure judgment, and issue an execution.

Under an ordinary note it often requires several months to get judgment.

Sometimes by the same note the signer waives all

benefit of the exemption laws, and the sheriff may then satisfy the execution out of any property the signer may have.

No. 13.—Judgment Note

Chicago, Ill., Jan. 1, 1900.

Ninety days after date, for value received, I promise to pay E. L. Compton, or order, Three Hundred Dollars, with interest and without defalcation or stay of execution. And I do hereby confess judgment for the above sum with interest and costs of suit, a release of all errors, and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

Witness, W. C. Buck.
A. C. Mills.

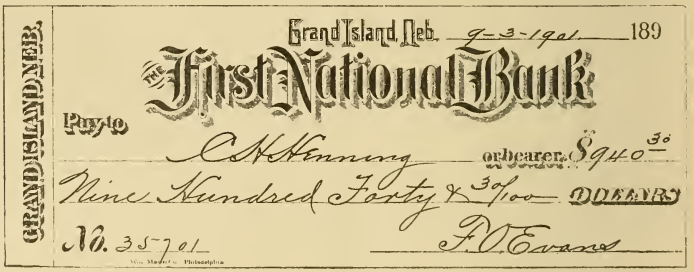
194. **Checks.**—A check is simply an order drawn on a bank asking for the payment of a certain sum of money. It is usually made payable to a particular person or his order or bearer. If payable to "A. M. Foote or order" it would be necessary for Foote to write his name on the back of the check before he could either sell it to any one else or cash it at the bank; but if it was payable to "A. M. Foote or bearer" it would not need his endorsement. It is customary with many banks to require the person presenting the check for payment to endorse the same even when payable to bearer.

195. **Convenience of Checks.**—The check is perhaps used more than any other form of negotiable paper, and it saves a wonderful amount of labor and responsibility. If the sum to be paid is large, it saves the time necessary to count the money, and also avoids the likelihood of an error in counting same.

Business men do not as a rule have good facilities for protecting a large amount of money from fire or theft, and the use of the check does away with the necessity of keeping on hand more than is needed for making change.

196. **Grace Not Allowed on Checks.**—While checks are really a kind of draft, there are no days of grace allowed on them; but they are payable on demand.

No. 14.—Check



197. **Parties to a Check.**—There are three parties to a check: the drawer or the one who signs it; the drawee, that is, the bank; and the payee, or the one to whom the check is payable.

It is the duty of the holder to see that the check is presented at the bank within a reasonable time, and if he fails to do this and the bank suspends payment he can not hold the maker of the check for the loss, but if the payee presents the check at the bank promptly, and for any cause payment is refused, he can then hold the drawer and endorsers responsible for same.

Except in Nebraska, Illinois, and Wisconsin the holder has no right of action against the bank, as the check is regarded as a contract between the maker of the same and the bank. In the three states named, it is held that the drawing and delivery of a check is in effect an assignment to the holder, of so much of the amount to the credit of the drawer, as the check calls for. A holder of a dishonored check should always take the necessary legal steps, such as notice or protest, to protect himself and preserve his right against the maker.

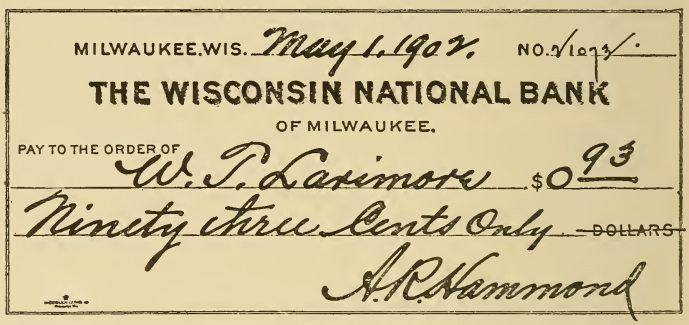
198. **Post Dating Checks.**—Some people make a practice of post dating their checks; that is, dating them ahead. They do this for the reason that they have no funds on deposit, and as payment can not be demanded on the check until the date written in same, they hope to be able to secure funds and make a deposit before the check is presented. This plan is

usually regarded as very unbusinesslike and can not be recommended.

199. **Overdrafts.**—When a depositor draws more money from a bank than he has to his credit, he is said to have overdrawn his account.

Unless a man is of excellent financial standing the bank will usually refuse to pay his check when it calls for more than the amount he has on deposit.

No. 15.—Form of Check for Less Than One Dollar


MILWAUKEE, WIS. May 1, 1902. NO. 1073

THE WISCONSIN NATIONAL BANK

OF MILWAUKEE.

PAY TO THE ORDER OF W. T. Larimore $0 93

Ninety three Cents Only ~~DOLLARS~~

A. R. Hammond

If a check be drawn when the drawer has no funds in the bank to meet it, and has made no arrangements with the bank to pay the same, such an act is regarded as a fraud, and the holder may prosecute the drawer at once. This does not apply to cases where some misunderstanding or miscalculation causes one to overdraw his account; but in order to hold a person for fraud it must be shown that the check was drawn with fraudulent intent.

200. **Forged Checks.**—The bank is supposed to know the signature of all its customers, and in case it pays a forged check it must bear the loss. If it pays a check that has been fraudulently raised or increased it can charge the drawer only for the original amount.

If, however, the drawer has been grossly careless in writing the check, so as to invite forgery (see form No. 8, p. 106), or in any other way is at fault, the bank will not be held liable, and the loss will fall on the maker of the check.

201. **Certified Check.**—A certified check is one that has been presented to the bank and marked by them as good. Suppose you hold a note against Mr. B for $1,000. He calls and offers to pay the same by giving a check on the bank, but you know nothing of his financial standing and do not like to cancel and deliver his note unless you are sure the check is good, so you ask him to go to the bank and have the check certified.

This is done by the proper official of the bank writing or stamping on the check the words "Certified" and then signing the same.

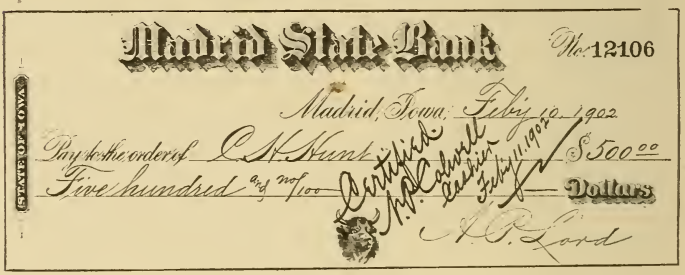
As soon as a check is certified, the bank charges the amount of it to the account of the drawer.

202. **Raised Check.**—A bank in certifying a check warrants the genuineness of the signature and the con-

dition of the drawer's account, but does not warrant that the check has not been raised. Suppose the certified check given herewith had been originally drawn for $100, but before certification it was raised to $500; the bank would be liable for only $100, and even if it paid the whole amount it would have the right to recover $400 from the person to whom the money was paid, but the drawer could be charged for the original amount only.

In a New York decision on this point the court says: "When money is paid by mistake on a raised check, neither party being at fault, it may be recovered back as paid without consideration."

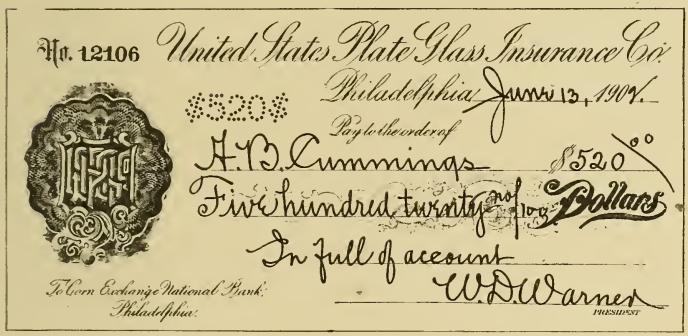
No. 16.—Certified Check



203. **Checks as Receipts.**—Many business men pay all their bills by checks, even when they have the cash on hand. They make each check payable to their creditor "or order," and he will then have to endorse same before he can dispose of it or get the money. These

checks are carefully preserved by the bank and returned to the drawer of same each month when his bank book is balanced. With the signature of his creditor on the back of same, each check operates as a receipt, and, being numbered as well as being uniform in size, they are in excellent form for future reference. The plan is a good one and can not be recommended too highly.

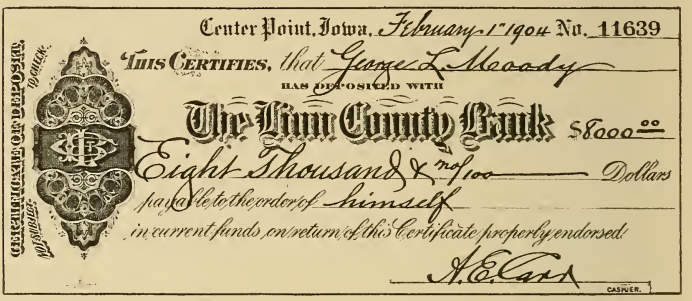
No. 17.—Check Drawn "In Full of Account"



204. **Check "In Full of Account."**—Sometimes the drawer of a check writes on same the statement that it is given to the payee in full settlement of a certain debt or account; but the particular circumstances surrounding the case must be considered to determine whether or not it really settles the account referred to. If a check drawn "in full of account" be sent in payment of a disputed claim, it operates as a compro-

mise, and will be considered as payment in full, provided the payee retains it. But if such a check be sent in payment of an undisputed account, it will not be regarded as payment in full, even if retained by payee, unless it be drawn for the full amount of the account.

No. 18.—Certificate of Deposit


Center Point, Iowa, February 1 1904 No. 11639

This Certifies, that George L. Moody has deposited with

The Linn County Bank $8000.00

Eight Thousand & no/100 Dollars

payable to the order of himself

in current funds, on return of this Certificate properly endorsed.

N. E. Cass

CASHIER.

CERTIFICATE OF DEPOSIT

205. **Certificate of Deposit.**—This is a certificate issued by the proper official of the bank stating that the amount of money named has been deposited in the bank payable to the order of the depositor. A certificate of this kind is negotiable in all the states except Pennsylvania, and must be surrendered when the money is drawn, as it is not subject to check.

This form of deposit is generally used when it is expected that the money will remain in the bank for considerable time or when the depositor has no occasion for giving checks. Should the holder want to draw a part of the amount called for at any time the old cer-

tificate is canceled and a new one issued for the balance, or the amount paid may be endorsed on the back of the instrument.

206. **Stopping Payment.**—If some fraud or error is discovered after a check has been delivered, or if for any other reason the drawer wishes to recall it he may "stop payment" by directing the bank not to honor same.

CHAPTER XIV

ENDORSEMENTS

207. **Definition.**—An endorsement is anything written on an instrument having reference to the instrument itself. If a person places his name on the back of a note or bill he is called the endorser, and the one to whom he gives the paper is called the endorsee.

208. **Objects of Endorsement.**—The endorsement and delivery of a paper not only transfers the title to the endorsee; but it serves as evidence of a contract made between the seller and buyer of the note, whereby the seller generally becomes responsible for the payment of the note under certain conditions; provided the original maker fails to pay the same.

209. **Where to Make an Endorsement.**—An endorsement should be made on the back of the paper about an inch from the left end. It should be written across the note the narrow way and all subsequent endorsements should be made directly under the first one. To endorse a check or bill on the wrong end, or lengthwise of the paper, always serves to point out the endorser as a person without business experience.

210. **Forms of Endorsement.**—Where notes or bills are payable to "bearer" or to "A B or bearer" they

may be transferred from one person to another without endorsement; but where they are payable to "A B or order" they must be endorsed by "A B" before he can transfer his title to any one else.

There are five forms of endorsement in common use, and A B may use any one of them he prefers, so long as it is satisfactory to the endorsee.

The forms most frequently seen are as follows:

1. *In Blank.*—Example: "Richard Stolley."

2. *In Full.*—Example: "Pay A. M. Johnson or order, Richard Stolley."

3. *Without Recourse.*—Example: "Without recourse to me, Richard Stolley."

4. *Restrictive.*—Example: "Pay to Clyde Hawthorne only, Richard Stolley."

5. *Conditional.*—Example: "Pay to Henry Brown, provided he graduates from the Grand Island Business and Normal College before April 1, 1903, "Richard Stolley."

While a note payable to A or bearer is transferable without endorsement, yet if it be endorsed the endorser will generally be held liable.

211. **Endorsement in Blank.**—An endorsement in blank is made by the endorser simply writing his name on the back of the paper. This makes the instrument payable to bearer, and it does not need any further

endorsement, no matter how many times it be transferred. It is so called because the name of the person to whom the paper is transferred is left blank, and any one coming into possession of the paper may fill in the same. To illustrate, Mr. A buys a bank draft for $500 payable to himself or order, which he endorses in blank and sends to you. You do not wish to hold a draft payable to bearer, and to guard against the danger of theft or other loss you may write above Mr. A's name "Pay to the order of (your name)." Should the draft now be lost or stolen no one can collect same, as it must have your signature on the back before it will be paid. Notes, drafts, or bills which are to be sent through the mails should not be endorsed in blank, for they may become lost or stolen and if sold to a *bona fide* purchaser for value he can collect the same.

212. **Endorsement in Full.**—An endorsement in full is one which mentions the name of the person in whose favor such endorsement is made. *Example*—"Pay to Howard Bristow or order, W. H. Ricks."

This endorsement being made, the note can not be transferred again without being endorsed by Bristow.

This is the proper form for general use in sending a bank draft or other negotiable paper through the mails, for no matter if it be lost or stolen no one can

collect it until the endorser puts his name on the back of it.

213. **Endorsement Without Recourse.**—The law ordinarily makes every endorser of a paper conditionally responsible for the payment of same, but the endorser may qualify this responsibility by the form of his endorsement.

If one wishes to simply sell an instrument without making himself liable for the payment of the same, he may use the following form: "Pay to Mr. A without recourse to me. Geo. N. Brown."

This is called an indorsement without recourse, and while such an endorser can not generally be held for payment, when the maker fails to pay the bill, yet it should be remembered that he can not entirely avoid responsibility, for he is a guarantor of the genuineness of the instrument, and should the signatures of any of the makers or endorsers prove to be forgeries, or should it be shown that any of the prior parties were incompetent, he will be held responsible.

214. **Restrictive Endorsement.**—A restrictive endorsement is one that restricts the payment to a particular person or for a special purpose. When it is desired to prevent the bill from being further transferred, the following forms may be used:

"Pay to Mr. A B only" or "Pay to A B for my ac-

count." When a paper is left with an attorney or agent for collection it may be endorsed as follows: "Pay to A B for collection and remittance."

This does not dispose of your title to the paper, but only transfers the instrument for a special purpose and entitles the collector to act as your agent. You have a perfect right to recall the paper at any time and strike off the endorsement by drawing your pen through the same.

Another form of restrictive endorsement in common use by business men is as follows: "For deposit to account of A B." This endorsement does not restrict the circulation of the instrument, but all who handle it after this endorsement do so merely as agents for A B.

215. **Conditional Endorsement.**—A conditional endorsement is one in which the order of payment is made conditional upon the happening of some event or the performance of some stipulation named in the endorsement. *Example*—"Pay to A B or order if he is living when due."

The payer of a bill containing a conditional endorsement should be careful to see that the conditions have been met, otherwise he is liable for a second payment.

216. **Who Should Endorse.**—If a paper is payable to

the order of several persons, each one should individually endorse it; but if it is payable to a partnership, any member of the firm may endorse it by using the firm name.

217. **Order of Liability.**—Endorsers on a note are responsible for its payment in the order they have signed the same; in other words, if there are five endorsers on a note the last one promises to pay it only on condition that the maker and the other four endorsers fail to do so.

218. **An Allonge** (al-lunj').—It sometimes happens that a negotiable paper is transferred so many times and receives so many endorsements that the back of same becomes completely filled. It is then necessary to attach to it a piece of paper on which other endorsements may be made. This extra paper is called an allonge.

219. **Rights of Endorsers.**—When an endorser of a note or bill finds it necessary to pay the same he is entitled to the paper, and it becomes his property. He has a perfect right to sell it if he can find a buyer, or he may dispose of it in any way he sees fit.

CHAPTER XV

CONDITIONS OF TRANSFER

220. As before stated, negotiable papers are intended to circulate freely from hand to hand and to some extent answer the purpose of money. For this reason the rules governing the transfer of same must be such as to give every honest buyer the utmost confidence. The law must give him a positive assurance that the paper will be his if he buys it, and that his title will be perfect and beyond question.

Thus far we have discussed the manner and form of drawing these papers, but now we come to the conditions under which they may be transferred from one person to another.

While, as above stated, the law will protect a *bona fide* (bō′-na fi′-dē) purchaser, that is, one who buys in good faith, it should be remembered that he must conform to the following conditions:

1. The instrument must be negotiable.
2. He must be an innocent purchaser.
3. He must give value for it.
4. He must buy it before maturity.
5. He must buy it in the usual course of business.

If all these conditions are fully complied with, the

holder will acquire a perfect title to the instrument and can enforce his right of collection, even though the paper has been obtained from the maker in the first place by theft or fraud.

221. **Must be Negotiable.**—Great care should be taken before buying a note or bill to see that it is negotiable in form. It must contain a positive promise to pay, or an order for some one else to pay a definite sum of money. It must also be payable to bearer or to the order of the payee.

222. **Innocent Purchaser.**—An innocent purchaser is one who buys the note in a perfectly honest manner, and is innocent of any defense or claims that exist against the paper.

If you buy a note from Mr. A, knowing that he has not a good title to same, you will receive no better title than he has, no matter if you pay him the cash for the note.

While the law will protect the innocent buyer, he is of course supposed to exercise ordinary discretion, and should there be anything about the conduct of the seller, or in the circumstances under which the note is offered for sale, to arouse the suspicion of the buyer and suggest fraud or defects of any kind, he should take time to investigate; otherwise he may have dif-

ficulty in establishing his claim of being an innocent purchaser.

223. **Must Give Value.**—A person who comes into possession of a note without giving value for it can not enforce collection of same, provided there is any just claim against the note.

This rule is based on the theory that the holder, having paid nothing for the note, will therefore lose nothing in case the note is declared void.

It should be remembered, however, that he need not pay the face value of the paper, or need not pay anything in money; but the payment may be made in anything of value, and the buyer will receive a good title.

224. **Lost Notes or Bills.**—From the above paragraph it will be inferred that if a note or bill is lost or stolen, the finder or thief can not enforce collection, even when the paper is payable to bearer, and this is correct, provided the facts are known to the maker, but if he should sell the lost or stolen paper to an innocent purchaser for value the purchaser would acquire a good title and be able to collect same by process of law.

225. **Burden of Proof.**—Any person having a negotiable instrument in his possession which is properly endorsed or payable to bearer is presumed to be a

bona fide holder of same, and in case he brings suit to collect it, he does not have to prove in what manner he came into possession of it. The law presumes that he acquired it in the regular course of business and for a valuable consideration, and it lies with the defendant in the case to prove the contrary. If the defendant offers evidence tending to show that fraud has been practiced in acquiring the title, then the holder must produce evidence showing that he is in fact the *bona fide* holder.

226. **Before Maturity.**—The rights of a purchaser often depend entirely upon whether the note or bill was bought before or after maturity. If it was bought before it became due, and in good faith for a valuable consideration, the buyer will receive a perfect title, no matter what the rights may have been between the original parties. If the buyer has knowledge of any defense existing against the paper, such as lack of, or illegality of consideration, he will not acquire a good title even if it is purchased before maturity.

227. **After Maturity.**—He who buys a negotiable paper after it becomes due does so at his peril, for, while the instrument is still transferable, it is subject to all defenses existing against it at maturity. In buying a past due paper you simply acquire the rights of the seller, and if he has a good title yours will be good;

but if he has no title you will receive none. The fact that a note or bill is past due is enough to arouse suspicion, for the legal presumption is that it would have been paid when due had there been no defense against it.

228. **In the Usual Course of Business.**—A holder of a negotiable paper must come into possession of it in the usual course of business if he would acquire all the rights of an innocent purchaser. In other words, he must receive the paper as an ordinary commercial transaction. A receiver of a bank, for example, who has property and notes turned over to him, does not come into possession of them in the usual course of business, for he is only acting as an agent to close up the affairs of the bank.

It is somewhat uncertain as to whether a person taking a note as collateral security receives it "in the usual course of business" or not, as the decisions are not uniform upon this point.

229. **Where There Are Several Transfers.**—A note or bill may have been secured by the original holder through fraud or theft, and yet, if it be purchased in good faith by an innocent buyer before maturity for a valuable consideration and in the usual course of business, he acquires a title that can never be questioned.

This transfer perfects the title, and any future buyers will receive their title from the innocent purchaser and not from the original holder; so that each subsequent purchaser will acquire a good title even though he knew of the fraud or theft committed by the original holder.

230. **When a Paper Matures.**—As negotiable papers should be transferred before maturity in order that the purchaser may be sure of a perfect title, it is a matter of great importance to know exactly when the paper matures or falls due. When the time is stated in days, the actual number of days are counted; when the time is given in months, it is understood to mean calendar months. It is customary to count the day of maturity, but not the day of date.

231. **Days of Grace.**—There are three days allowed by many states on all negotiable papers beyond the time stated in the instrument itself. This is a very old custom and was at first regarded purely as a matter of favor or grace, and no interest was charged for same, but after long use it has grown into a law, and interest is now charged.

A note dated January 1, and payable ten days after date would at first seem to be due January 11, but in reality it is not due until January 14, for the law gives the maker three extra days of grace, and no

suit can be commenced on the note until January 15, as he has all of the last day of grace in which to make payment.

232. **Grace Not Allowed.**—Days of grace are not generally allowed on demand notes or notes which are not negotiable; neither are they allowed on checks or drafts drawn on banks or bankers.

While the custom of allowing days of grace on negotiable paper was formerly almost universal in this country, within recent years the following states have abolished the same by statutes: California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Illinois, Idaho, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Tennessee, Vermont, Virginia, West Virginia, Washington, and Wisconsin. No grace is allowed on sight drafts in Kansas, Missouri, Georgia, Louisiana, or Nevada.

233. **If Due on Sunday.**—When the last day of grace falls on Sunday the note or bill will be due the day before, and if that be a holiday the note will mature Friday. There are only one or two states that vary from this rule.

234. **Legal Holidays.**—In the United States we have no national holidays, although each state has, by act of the legislature, designated such days as it will re-

gard as legal holidays. The following list represents the holidays most commonly recognized: New Year's Day, January 1; Lincoln's birthday, February 12; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Thanksgiving Day, last Thursday in November; Christmas, December 25; Arbor Day and Labor Day. We give below a brief condensation of the statutes of a number of the western states relative to days of grace and holidays which are recognized for all purposes relating to presenting, sending notices, and protesting negotiable papers.

235. **Nebraska.**—The legal holidays in Nebraska are the following: New Year's Day, January 1; Washington's birthday, February 22; Arbor Day, April 22; Decoration Day, May 30; Independence Day, July 4; Labor Day, first Monday in September; Thanksgiving Day, last Thursday in November; Christmas, December 25.

No court can be open nor can any judicial business be transacted on Sunday or any legal holiday except to give instructions to a jury, to receive a verdict, or discharge a jury, or in a few other extreme cases calling for immediate action.

Days of grace are allowed on all negotiable papers except bank checks and instruments payable on demand. If the third day of grace falls on Sunday or a legal holiday the bill is payable the next Monday. Notes given on Sunday are not void.

236. **Kansas.**—The legal holidays in Kansas are as follows: Sundays; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Christmas Day, December 25; New Year's Day, January 1; Thanksgiving Day, last Thursday in November; Labor Day, first Monday in September.

Days of grace are allowed on all negotiable papers except bank checks and sight drafts.

When the third day of grace falls on Sunday or a legal holi-

day the preceding day shall be deemed the last day of grace. By act of 1893, special provision in notes, bonds, and mortgages, making amount payable in gold, is void.

237. **Colorado.**—The legal holidays in Colorado are as follows: New Year's Day, January 1; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Arbor Day, third Friday in April; Labor Day, first Monday in September; Thanksgiving, last Thursday in November; Christmas, December 25; election day, the first Tuesday after the first Monday in November; and in cities of 100,000 inhabitants or over, Saturday afternoons during the months of June, July, and August of each year. When holidays fall on Sunday, the following Monday shall be considered as the holiday. Notes maturing on Sundays or holidays are payable the following day.

Days of grace have been abolished. An instrument payable at a bank is equivalent to ordering the bank to pay the same for the account of the debtor. Judgment notes are not used.

238. **South Dakota.** The legal holidays in South Dakota are as follows: Sundays; New Year's Day, January 1; Washington's birthday, February 22; Independence Day, July 4; Christmas, December 25; Decoration Day, May 30; every state election day, first Tuesday after the first Monday in November; Labor Day, first Monday in September; Thanksgiving Day, last Thursday in November. If January 1, February 22, July 4, or December 25 fall on Sunday the Monday following shall be a holiday.

Days of grace are allowed on all notes and drafts whether demand or time, except bank checks, but Sundays and holidays are excluded in computing grace. Judgment notes not in use.

239. **North Dakota.**—The legal holidays in North Dakota are as follows: Sundays; New Year's, January 1; Lincoln's birthday, February 12; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Christmas, December 25; every election day, first Tuesday after the first Monday in November; Thanksgiving, the last Thursday in November.

If January 1, February 22, July 4, or December 25 falls upon Sunday, the following Monday shall be a holiday.

Days of grace are not allowed. When no time of payment is specified in an instrument, it is payable immediately.

240. **Iowa.**—The legal holidays in Iowa are as follows: Sundays; New Year's Day, January 1; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4;

Labor Day, first Monday in September; Christmas, December 25; Thanksgiving, last Thursday in November; general election day.

Three days of grace are allowed on all negotiable papers except those payable on demand, and if the last day falls on Sunday or a legal holiday, the instrument becomes due on the second day of grace. Judgment notes not used.

241. **Illinois.**—Legal holidays in Illinois are as follows: New Year's Day, January 1; Lincoln's birthday, February 12; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Labor Day, first Monday in September; Thanksgiving, last Thursday in November; Christmas, December 25.

Days of grace abolished since July 1, 1895. When a holiday falls on Sunday the next Monday will be the legal holiday. All notes or evidence of indebtedness maturing on Sunday or a legal holiday will become due on the day following. If the following day should also be a holiday or Sunday then the instrument will become due the next day.

Notes obtained by fraud can not be collected even when in the hands of innocent holders.

242. **Missouri.**—The legal holidays in Missouri are as follows: New Year's Day, January 1; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Labor Day, first Monday in September; election day, first Tuesday after the first Monday in November; Thanksgiving Day, the last Thursday in November; Christmas, December 25. Half holidays are allowed every Saturday afternoon throughout the year in cities of 100,000 inhabitants or more. Holidays falling on Sunday are observed the day after. Judgment notes are not used. Days of grace are allowed except on sight bills.

243. **Montana.**—The legal holidays in Montana are as follows: Sundays; New Year's Day, January 1; Washington's birthday, February 22; Decoration Day, May 30; Independence Day, July 4; Labor Day, first Monday in September; Christmas, December 25; every general election day; and Thanksgiving Day.

If a holiday falls on Sunday the day following will be regarded as a holiday. Days of grace are abolished.

244. **Wyoming.**—The legal holidays in Wyoming are as follows: New Year's Day, January 1; Arbor Day, April 30; Washington's birthday, February 22; Decoration Day, May 30; Independence

Day, July 4; Labor Day, first Monday in September; state election days; Thanksgiving, last Thursday in November; Christmas, December 25.

Holidays falling on Sunday are observed the following Monday, and notes or bills maturing on a legal holiday are due the day before. Days of grace are allowed on all negotiable papers except demand notes and checks or drafts on banks.

CHAPTER XVI

PRESENTMENT FOR ACCEPTANCE

245. **Observation.**—It should be remembered that while a drawer of a draft or bill of exchange is responsible for the payment of same in case it is dishonored, yet his liability is only conditional. It is in fact much the same as that of an endorser, and unless the holder of the draft makes proper demand for acceptance and payment, and carries out all the conditions required of him, the drawer and endorsers will be released from any liability in case of non-payment of the draft.

246. **What is Acceptance?**—The customary form of accepting a draft is to write or stamp the word "accepted" across the face of the instrument, followed by date and signature of the acceptor. In the absence of statute to the contrary, an oral acceptance is held to be valid on existing drafts, but no careful person would buy a bill accepted in this manner.

247. **Drafts Which Should be Accepted.**—All time drafts and all sight drafts in states where they are allowed days of grace should be presented for acceptance. If a draft is drawn payable at "ten days sight," it of course must be presented in order to fix the date

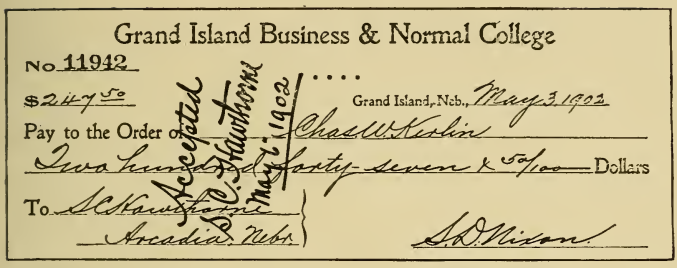
of maturity, as the acceptor will have ten days after presentation in which to pay the bill, and if grace is allowed he will have three days more, making thirteen days in all.

Many states allow three days of grace on sight drafts, and in that case they must also be presented for acceptance in order to fix the date of maturity. When a draft is payable "ten days after date" it is not really necessary to present it for acceptance, but it is better to do so. If acceptance is refused on a draft it is not necessary that it should be presented for payment in order to protect your rights against the drawer.

248. **Effect of Acceptance.**—A draft is simply an order given by one person to another requesting a third party to pay a certain sum of money. In form No. 19, S. D. Nixon is the drawer, Chas. W. Kerlin the payee, and S. C. Hawthorne the drawee or acceptor.

It will be noticed that Hawthorne did not become a party to this instrument until he accepted it. It was merely a request from Nixon for him to pay Kerlin $247.50, and, had he refused the request, Kerlin could not have sued him on the draft, but having accepted it, it then takes the character of a note, and Hawthorne can be legally held for the payment.

No. 19.—Acceptance


Grand Island Business & Normal College

No 11942

$247.50 Grand Island, Neb., May 3 1902

Pay to the Order of Chas. W. Kuhn

Two hundred forty-seven & 50/100 Dollars

To S. C. Hawthorne Arcadia, Nebr.

Accepted May 7, 1902 S. C. Hawthorne

S. D. Nixon

249. **When Drafts Should Be Presented.**—Every draft requiring acceptance should be presented to the drawee for that purpose within a reasonable time. Just what a reasonable time is can only be determined when all the circumstances surrounding the particular case are taken into consideration.

If you hold a sight draft against me when we both live in the same town you should present it at once, for if you delay a week, and in the meantime I fail in business, you have waited an unreasonable time and can not hold the drawer or endorsers, but must bear the loss yourself, unless you can show some good reason for the delay.

A draft should be presented during the customary business hours, which generally means between early morning and bed time, but in case of banks it should be presented during their regular hours for doing business. Any distinct custom established in the

locality as to the time of presentation would no doubt be respected by the courts.

250. **Who Should Present it?**—A draft or bill should be presented for acceptance by the holder or his lawful agent. The holder may be the payee named in the instrument, or he may be any one who has come into possession of it in due course of business.

251. **To Whom.**—The draft should be presented to the drawee or his authorized agent for acceptance. If drawn on a firm it may be presented to any one of the partners, but if drawn on two or more persons who are not partners it should be presented to each one individually.

It has been held that a clerk apparently in charge of the drawee's office is a suitable person to whom the bill may be presented for acceptance.

252. **Where to Present Draft.**—A draft may be presented at the office or home of the drawee, and in case he has changed his residence it is the duty of the holder to make diligent inquiry and search for him.

The draft may be drawn payable at a certain bank or business house, but even then the holder must seek the drawee to secure his acceptance, for it will be noticed that the drawee has not yet promised to pay the draft at the bank or any other place. In case the

drawee can not be found the draft will be regarded as dishonored.

253. **Excuses.**—The payee of a draft is held to very strict account in the matter of presenting the instrument for acceptance. There are, however, a few excuses which are usually recognized, such as illness, flood, fire, war, etc.

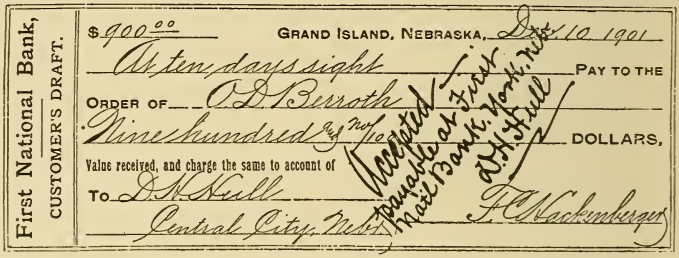
254. **How to Present a Draft.**—The person who presents a bill for acceptance should have it in his possession and should produce the same and exhibit it to the drawee or his agent with the request that it be accepted. The drawee has a right to examine the draft and satisfy himself as to its genuineness. He may also, if he wishes, keep the same in his possession twenty-four hours before deciding whether or not he will accept it. This gives him an opportunity to examine his account with the drawer and ascertain if the amount is correct; but should he destroy the draft or refuse to return it to the owner, it will be presumed, by the law of some of the states, that he has accepted it.

255. **Conditional Acceptance.**—The holder of a draft has no right to permit a conditional or qualified acceptance of same, and in fact if he does, the drawer and endorsers are at once released from further liability. The holder should insist on an unconditional

acceptance or none, for then he can hold the drawers and endorsers if the drawee fails to pay the bill.

256. **Acceptance in Different Place.**—If a collector or holder of a draft consents to the same being accepted payable at any other place than the city of the drawee's residence, it has the effect of releasing the drawer and endorsers, and the holder or collector will be held for its payment. If the place of payment may be changed by the drawee so as to make it payable in a neighboring town, it may be changed to a greater distance, and this would be a material departure from the term of the instrument.

No. 20.—Acceptance Which Releases Drawer and Endorsers



257. **What Acceptance Admits.**—When any person accepts a draft or bill he makes certain admissions by so doing, and these are sometimes very important. First, he admits that the signature of the drawer is genuine and this he can not afterwards deny, even in case it proves to be a forgery. Second, he admits that the

drawer is a competent party of legal age and sound mind.

258. **Non-acceptance.**—When the drawee refuses or neglects to accept a bill that has been properly presented to him, the draft is said to be dishonored, and if it be a foreign bill it should be protested at once and notices sent to drawer and all endorsers. If it be an inland bill it is usually sufficient to simply send notices to the drawer and endorsers, but the safer way is to have the paper protested. In sending notices of non-payment or non-acceptance no particular form is necessary, but an ordinary business letter setting forth the facts is sufficient. Further details regarding protested notes and bills will be found in the next chapter.

CHAPTER XVII

PRESENTATION FOR PAYMENT

259. **Why Necessary.**—It should be remembered that the object in presenting a note or acceptance for payment at maturity is not that you may hold the maker or acceptor in case of non-payment, for they would not be released even though you wait a number of years before presenting it, provided you did not wait until it was outlawed, but unless presentation is promptly made and in exact accordance with the law, the drawer of the draft, together with all endorsers, will be entirely released from any obligation in case of non-payment.

260. **By Whom.**—Presentment for payment should be made by the holder or his legally authorized agent. If the holder dies before the paper becomes due, the presentment and demand for payment should be made by his legal representative within a reasonable time after his appointment.

261. **To Whom.**—Presentment for payment should be made to the maker of the note or acceptor of a draft or his authorized agent. In case of death of the maker or acceptor, the presentment should then be made to his personal representative, if there be one,

and, if not, it may be presented at the residence of the deceased. In case of a joint note or draft, presentment should be made to all parties, but it is not absolutely necessary that it should be presented to all the parties on the day of maturity, although a reasonable effort should be made to do so.

262. **When.**—Notes and bills must be presented for payment the very day they become due if the holder expects to look to the drawer or endorsers for payment in case the instrument is dishonored. The time can not be either hastened or delayed a single day. If made before the day it is of no effect, and if made afterwards the holder must show some valid reason for the delay. Although payment must be demanded on the day of maturity, a holder has all the business part of the day on which the paper falls due in which to present it. The holder of a bank check should present it for payment or forward it for presentment within a reasonable time after receiving it, otherwise he can not hold the drawer if the bank should fail.

Twenty-four hours is usually regarded as a reasonable time, and one who holds a check longer generally does so at his own risk.

263. **Demand Notes and Drafts.**—Instruments drawn payable on demand are not, as a rule, allowed days of grace, but are payable upon presentation. They should

be presented as soon as they are received, or at least within a reasonable time if the holder wishes to charge the endorsers or drawer in event of non-payment.

264. **Where.**—If a paper is made payable at some particular bank or business house, it should be presented there for payment, but if no special place is named, it should be presented at the maker's office or residence. If payable in a certain town it is sufficient to present it at all the banks, provided the maker does not live in the town. A demand may be made on the street unless the maker objects to it as an improper place.

265. **How.**—When a paper is payable at a bank, it is sufficient demand if the instrument is in the bank at maturity, so that any one authorized to do so may call and pay the same.

If it is not payable at a particular place, the holder should seek the payor and by an actual exhibition of the paper ask for payment.

266. **Non-payment.**—If there be no endorsers on a note it is not necessary to demand payment at maturity unless the holder wishes to do so.

As stated before, the whole object of a prompt demand is to be able to hold all endorsers for payment in case the note is dishonored.

267. **Protest.**—The endorsers of a negotiable paper

have a right to insist that the holder of the instrument at maturity complies strictly with the requirements of the law as to the time, place, manner, etc., of the presentment and demand for payment. Therefore when payment has been refused the holder desires some official proof that he has performed faithfully all that the law demanded of him.

The best proof he can furnish is a protest, which is usually made by a notary public and consists of a formal and solemn document in which the notary, for the holder, protests against being held for any loss on account of non-acceptance or non-payment of the instrument.

268. **What the Protest Should Contain.**—The formal certificate of protest made by the notary should contain the following information:

1. Time of presentment.
2. Place of presentment.
3. Fact and manner of presentment.
4. Demand of payment.
5. Fact of dishonor.
6. Name of person presenting it.
7. Name of person to whom presented.
8. Persons notified.
9. When and how notified.

269. **When Protest Should be Made.**—The demand and

protest should be made in accordance with the laws of the place where the instrument is payable. The notary should present the bill or note himself on the day it falls due and demand payment. If payment is refused, he should make a record of all facts concerning the presentment in a book which is kept for that purpose.

This record may be made on the same day the note is presented for payment, but the formal protest may be made later.

270. **When Protest is Necessary.**—Every foreign bill of exchange or draft must be protested in case of non-acceptance or non-payment, as this is the only evidence admitted to show that the holder made proper demand for payment.

271. **When Protest is Not Necessary.**—It is not absolutely necessary to protest an inland bill, or a promissory note whether foreign or inland, although it is quite customary to do so, but notice of non-payment should be given by the holder to all antecedent parties, provided the instrument is not protested.

272. **Notary Public.**—A notary is a public officer appointed by the governor of the state on petition, and is regarded as the proper official to protest notes or bills. It is also customary to have a notary take the acknowledgements of signatures to important docu-

ments of any kind. In Nebraska and many other states the law requires that the date of the expiration of his commission shall be either engraved upon his seal or written upon every certificate he signs.

His protest under seal is recognized in any state or foreign country, and is taken as conclusive evidence that the bill has been dishonored.

If there be no notary in the locality where the bill is dishonored, any responsible person in the place may protest it in the presence of two or more reliable witnesses.

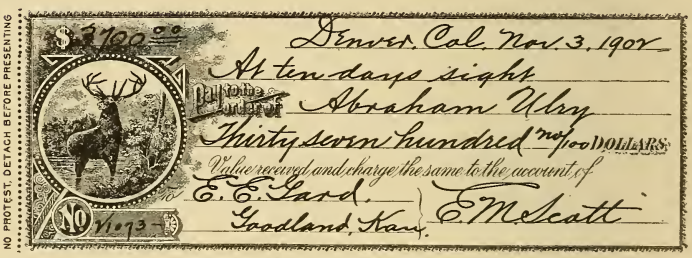
273. **Notice of Protest.**—It is not necessary to send a copy of the protest to each endorser, but notice should be sent stating that the bill has been dishonored. This notice may be given in person or sent by messenger or through the mails, but it must be done promptly, generally within twenty-four hours after the bill is dishonored.

If a draft or note has passed through the hands of several persons of different localities, the notary is often unable to ascertain the address of each individual endorser, and in that case it is customary to fill out a notice for each endorser and send all of them in one envelope to the last endorser; he can retain his notice and send the balance to the next endorser; he will do the same and so on, each man being allowed

twenty-four hours in which to notify the party who endorsed it before him.

274. **"No Protest."**—Many drafts have printed across the end of same the following words: "No protest. Detach before presenting." This is intended as private instruction to the bank presenting the draft for payment. It may mean that the account is considered doubtful and the drawer does not care to pay the protest fees and thus add to his loss, or it may be that he does not want to embarrass the drawee in case he is unable to pay the draft.

No. 21.—Draft with "No Protest" Attached



275. **Waiver.**—Any or all endorsers may waive demand, protest, or notice of non-payment by so stating in the note. Many notes have this waiver printed on the face of same, and by this means much annoyance as well as the expense of protesting is avoided.

276. **Quasi-Negotiable Paper.**—Quasi (quā-si) means

having some resemblance to, and quasi- negotiable paper is one possessing some of the attributes of negotiable paper but not all of them. They may well be said to occupy a position midway between common contracts and negotiable instruments.

Among the most common forms of paper belonging to this class may be mentioned the Bills of Lading, Warehouse Receipts, Letters of Credit, and Receiver's Certificate.

No. 22.—Notarial Protest

State of Nebraska, } ss.
Hall County. }

On the tenth day of May, A.D. 1901, D. B. Williams, a notary public, duly appointed, commissioned, and qualified in and for the county aforesaid, and residing in the city of Grand Island, in said county, at the request of A. N. Palmer, went with the original note hereunto annexed, to the place of business of D. T. Ames and then and there presented the same to him and demanded payment thereof, which was refused. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorsers thereof as against all others with whom it doth or may concern for exchange, re-exchange, and all costs, damages, and interests already incurred, or that may hereafter be incurred by reason of the non-payment thereof.

And thereupon, on the day aforesaid, I served notices on the maker and endorsers of said note respectively, notifying them that payment thereof had been duly demanded and refused, that the same had been protested for non-payment, and that the holders looked to them for payment. Said notices were served in the following manner:

On the following named parties, by depositing such notices in the post-office at Grand Island, Neb., postage prepaid, and directed as follows:

A notice for W. D. Waller, directed to Taylorville, Ill.

A notice for I. J. Glass, directed to Sharpsburg, Ill.

A notice for K. M. Campbell, directed to Lewiston, Ill.

Each of the above named places being the reputed place of residence of the person to whom this notice was sent.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at Grand Island, in said county and state, the day and year first above mentioned.

[SEAL]

D. B. Williams,
Notary Public.

My commission expires December 9, 1903.

No. 23.—Notice of Protest

Take Notice: Grand Island, Neb.,-May 10, 1901.

That a note made by D. T. Ames, dated January 3, 1899, for $275.50, payable May 10, 1901, and endorsed by you, was this day duly presented for payment and payment thereof was duly demanded, and refused, and the same was protested for non-payment.

You are hereby notified that the holders look to you for payment, damages, interests, and costs.

Respectfully,

D. B. Williams,
Notary Public.

To W. D. Waller,
Taylorville, Ill.

CHAPTER XVIII

MISCELLANEOUS ITEMS PERTAINING TO NEGOTIABLE PAPER

277. **Bill of Lading.**—A bill of lading is a written instrument given by a common carrier to a shipper, certifying that the goods therein named and described have been received and will be delivered at their destination according to the terms set forth in the bill. It is a contract, as well as a receipt, and while it may be transferred by endorsement, the purchaser does not receive any better title to the goods than the seller had. In this particular it is unlike a negotiable paper.

278. **Warehouse Receipts.**—This is simply a receipt issued by the owner of a warehouse or his agent stating that certain goods have been stored with him subject to his order.

It is very similar to a bill of lading, and may be transferred from one person to another, but like all receipts it may be explained or denied by proper evidence, even though it has passed into the hands of an innocent holder. It therefore can not be regarded as a negotiable paper unless it is made so by statutory regulation.

No. 24.—Warehouse Receipt

Field, Leiter & Co.

No..... Chicago, Dec. 12, 1903.

Received in store from car 1032 C. B. & Q. four hundred ninety seven $^{27}/_{60}$ bushels of No. two Wheat subject only to the order hereon of Henry W. Banner & Co. on the surrender of this receipt and the payment of charges. This grain is subject to our advertised rates of storage.

It is hereby agreed by the holder that the grain herein mentioned may be stored with other grain of same quality by inspection. Loss by fire or heating at owner's risk.

Field, Leiter & Co.

Bushels 497, Lbs. 27

279. **Travelers' Letters of Credit.**—A letter of credit is a written request from one bank asking another bank to pay the person named a certain sum, or to cash his draft for the amount mentioned in the letter.

If the request is addressed to several correspondents it is called a circular letter of credit.

These letters are but little used except when traveling in foreign countries, and then they become almost a necessity.

If you wish to take a trip to any foreign country you may deposit in your bank the amount you expect to use, and receive for the same a letter of credit. This allows you to draw money through the banks named in the letter just as you need it, and in such amounts as

you may desire, provided the total does not exceed the sum named in the letter.

No. 25.—Face of Letter of Credit

KOUNTZE BROTHERS

CIRCULAR LETTER OF CREDIT

No 9810

£ 200#

Expiring Nov. 16 1901

New York May 16th 1901

Gentlemen:

This will serve to advise you that we have opened a credit of Two hundred pounds sterling in favor of Mr. Lester H. Marston who will present the form of identification provided by us, and whose drafts at sight on the Union Bank of London Limited, London, England to the amount not drawn, we engage will meet with due honor if negotiated within six months from this date.

The amount and particulars of each payment must be endorsed hereon and the negotiation of a draft by you will be your guarantee that the requisite endorsement has been made.

Each draft must specify that it is drawn against Kountze Brothers Letter of Credit No 9810

We are, Gentlemen,

Faithfully Yours,

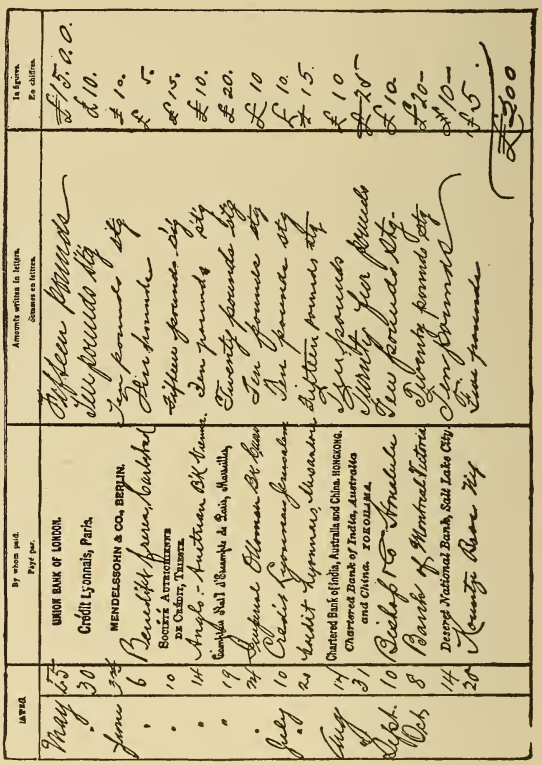
To Our Correspondents Kountze Brothers.

280. **Book of Indication.**—Formerly letters of credit contained the signature of the accredited person for the purpose of identification, but the more modern method is to issue a special book for that purpose called the book of indication.

This book contains the duly authenticated signature of the person who is to draw the money, and it

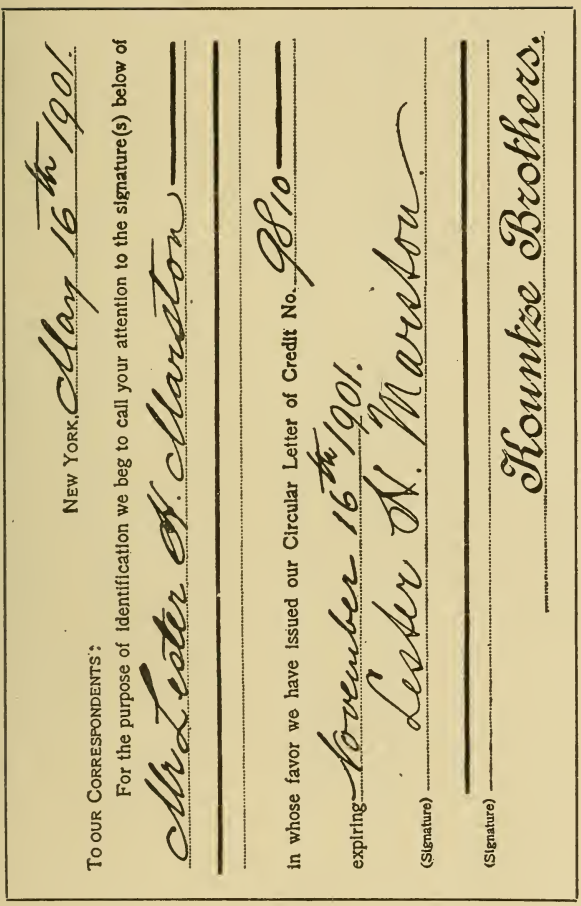
also refers to the letter by number and otherwise describes it.

No. 26.—Back of Letter of Credit, Showing Amounts Paid on Same



281. **Two or More May Draw on Letter.**—When several persons are traveling together and paying their expenses from the same letter of credit, as in case of a family or party, the letter may be issued, if desired, so that any member of the party may draw the money.

No. 27.—Book of Indication Which Goes With Letter of Credit



In that case the book of indication must contain the signature of each person named in the letter.

Where the letter is issued in the name of one person only in the family or party, it might prove very

embarrassing and cause much delay if that person should meet with an accident or become incapacitated in any manner.

282. **Advantage of Two-part Letter.**—It will be seen from the above that it requires two documents to constitute a letter of credit: first, the letter itself; second, the book of indication, or identification.

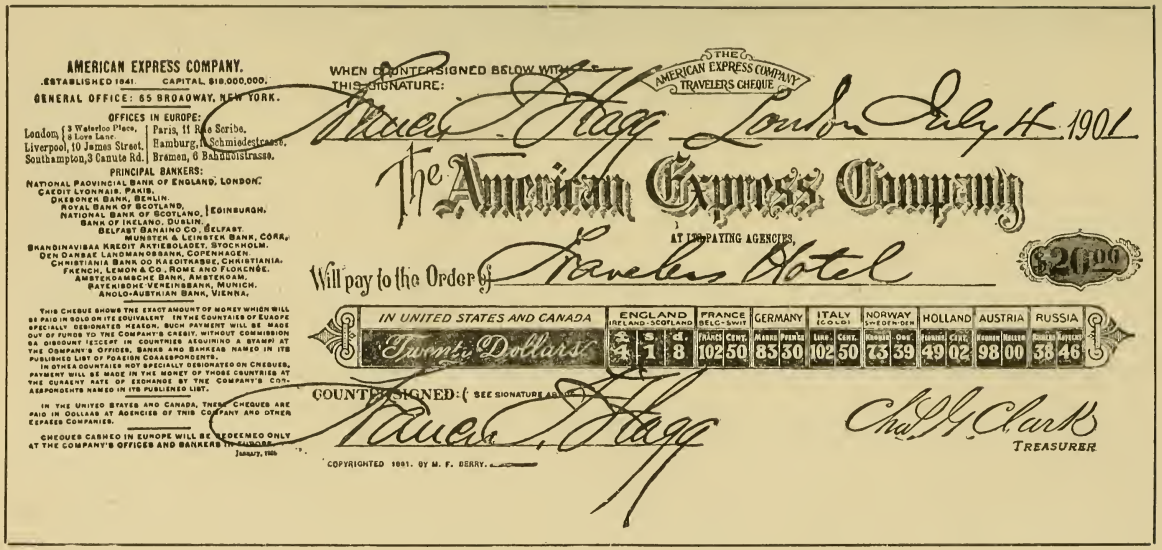
In case either of them is lost or stolen, no one can draw the money on same without the other, and if they are not carried together there is but little chance of them both falling into the hands of the same person.

While the owner can not draw money on one of the documents alone, either of them in case the other is lost, would no doubt serve for temporary credit until arrangements could be made for funds.

283. **How to Draw Money on a Letter.**—Most of the letters of credit are drawn in pounds sterling, as London is said to be the clearing house of the world, and bankers in all parts of the globe, as a rule, prefer to buy drafts on some city in England.

The letter contains the name of one bank in each of the principal cities in the world, and when a traveler wishes to draw some money he calls upon the bank named, in whatever city he may be at that time, shows his letter, fills out a draft for, say, twenty pounds sterling, and receives for it the equivalent in

No. 28.—Traveler's Cheque, Issued by the American Express Company



AMERICAN EXPRESS COMPANY.
ESTABLISHED 1841. CAPITAL, $18,000,000.
GENERAL OFFICE: 65 BROADWAY, NEW YORK.

OFFICES IN EUROPE:
London, { 3 Waterloo Place, / 8 Lore Lane. | Paris, 11 Rue Scribe.
Liverpool, 10 James Street. | Hamburg, 4 Schmiedestrasse.
Southampton, 3 Canute Rd. | Bremen, 6 Bahnhofstrasse.

PRINCIPAL BANKERS:
NATIONAL PROVINCIAL BANK OF ENGLAND, LONDON.
CREDIT LYONNAIS, PARIS.
DISCONTO BANK, BERLIN.
ROYAL BANK OF SCOTLAND, / NATIONAL BANK OF SCOTLAND, | EDINBURGH.
BANK OF IRELAND, DUBLIN.
BELFAST BANKING CO., BELFAST.
MUNSTER & LEINSTER BANK, CORK.
SKANDINAVISKA KREDIT ARTIEBOLAGET, STOCKHOLM.
DEN DANSKE LANDMANDSBANK, COPENHAGEN.
CHRISTIANIA BANK OG KREDITKASSE, CHRISTIANIA.
FRENCH, LEMON & CO., ROME AND FLORENCE.
AMSTERDAMSCHE BANK, AMSTERDAM.
BAYERISCHE VEREINSBANK, MUNICH.
ANGLO-AUSTRIAN BANK, VIENNA.

THIS CHEQUE SHOWS THE EXACT AMOUNT OF MONEY WHICH WILL BE PAID IN SOLID GOLD OR ITS EQUIVALENT IN THE COUNTRIES OF EUROPE SPECIALLY DESIGNATED HEREON. SUCH PAYMENT WILL BE MADE OUT OF FUNDS TO THE COMPANY'S CREDIT, WITHOUT COMMISSION OR DISCOUNT (EXCEPT IN COUNTRIES REQUIRING A STAMP) AT THE COMPANY'S OFFICES, BANKS AND BANKERS NAMED IN ITS PUBLISHED LIST OF FOREIGN CORRESPONDENTS.
IN OTHER COUNTRIES NOT SPECIALLY DESIGNATED ON CHEQUES, PAYMENT WILL BE MADE IN THE MONEY OF THOSE COUNTRIES AT THE CURRENT RATE OF EXCHANGE BY THE COMPANY'S CORRESPONDENTS NAMED IN ITS PUBLISHED LIST.

IN THE UNITED STATES AND CANADA, THESE CHEQUES ARE PAID IN DOLLARS AT AGENCIES OF THIS COMPANY AND OTHER EXPRESS COMPANIES.

CHEQUES CASHED IN EUROPE WILL BE REDEEMED ONLY AT THE COMPANY'S OFFICES AND BANKERS IN EUROPE.
January, 1901.

WHEN COUNTERSIGNED BELOW WITH THIS SIGNATURE: James C. Flagg

THE AMERICAN EXPRESS COMPANY'S TRAVELER'S CHEQUE

London July 4 1901

The American Express Company

AT ITS PAYING AGENCIES,

Will pay to the Order of Travelers Hotel

$20.00

IN UNITED STATES AND CANADA	ENGLAND IRELAND-SCOTLAND			FRANCE BELG.-SWIT		GERMANY		ITALY (GOLD)		NORWAY SWEDEN-DEN		HOLLAND	AUSTRIA	RUSSIA	
Twenty Dollars	£	s	d	Francs	Cents	Marks	Pfen'gs	Lire	Cent.	Kroner	Ore	Florins	Cent.	Kroner	Heller	Roubles	Kopecks
	4	1	8	102	50	85	30	102	50	73	39	49	02	98	00	38	46

COUNTERSIGNED: (SEE SIGNATURE ABOVE) James C. Flagg

Chas. G. Clark
TREASURER

COPYRIGHTED 1891, BY M. F. BERRY.

the currency of the country in which he is then traveling.

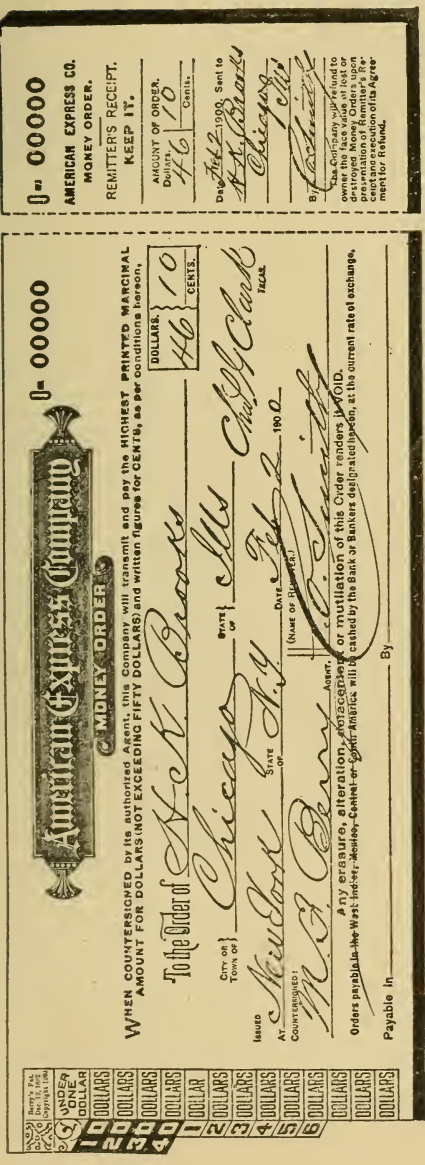
284. **Cost of Letters of Credit, etc.**—In addition to the amount named in the letter the purchaser must pay the usual charge of about one per cent commission.

Domestic letters of credit to be used by travelers in the United States can also be had when desired at about the same rate.

285. **Travelers' Cheques.**—Some of the leading express companies issue what they call Travelers' Cheques. They are intended for the use of travelers in this and foreign countries, and on each check is printed its exact value, in the currency of the principal foreign countries. They are issued in denominations of $10, $20, $50, $100, and $200, and it is claimed by the express companies issuing them that they are cheaper than Letters of Credit and are more convenient in many ways.

286. **Bank Drafts.**—A bank draft is simply a check drawn by one bank on another bank. It is sometimes called "Exchange." Most banks keep money deposited in one of the New York City banks, and sell drafts on same to merchants and others, who use them extensively in making remittances from one city to another. Drafts on New York banks are usually considered the same as cash any place in the United

No. 29.—American Express Money Order



States. The purchaser of a draft should always have it drawn payable to the order of his own name, then he can endorse it over to the person to whom he sends it, who in turn will have to endorse it before he can get it cashed.

287. **Money Orders.**—The post-offices in all parts of the United States and all express companies sell money orders, which are also extensively used in making remittances from

one place to another. They are perfectly safe and are a great convenience to the people in the localities where there are no banks; besides, if the amount is small, the cost of a money order is less than that of a draft.

No. 30.—Pacific Express Money Order

288. **Receiver's Certificate.**—Certificates issued by a receiver appointed by the court, such as a receiver of a suspended bank, are not regarded as negotiable, although they generally use the negotiable words. There is not an unconditional promise to pay a certain sum, but the amount mentioned is to be paid only on condition that enough funds are realized from the assets to meet all the obligations. The fact of this condition renders the certificate non-negotiable.

289. **Collateral Security.**—By collateral security is

meant anything that is pledged or deposited as security for the payment of a debt. Notes, mortgages, stocks, bonds, etc., are much used in this way.

You go to the bank to borrow $1,000 on your note, and as security you leave with the bank a note against Brown for $1,500. Should this note against Brown become due before the maturity of the one you gave the bank, it is the duty of the bank to collect the same and apply it on the note you have given them, the balance, if any, to be turned over to you.

Any one who holds notes or drafts as collateral security is responsible if he fails to make the necessary demands for payment or acceptance, or if he allows the bill to become outlawed. He must also send the proper notices to all drawers or endorsers.

290. **When a Note Draws Interest.**—The general rule of law is that no negotiable bill or note draws interest until after maturity unless it be so stated in the instrument. After it is due it will draw interest at the legal rate unless a higher rate is named in the contract itself.

291. **Extending Time of Payment.**—The holder of a note is not obliged to bring suit as soon as the paper becomes due, but should he make an agreement based upon a valuable consideration to extend the time of payment for even one day beyond maturity, by that

act he releases all signers and endorsers of the note except the one with whom he made the agreement. To illustrate: you hold a note signed by A as principal and B and C as surety. On the day it falls due Mr. A comes in and says he can not ship his cattle for thirty days but will pay the interest in advance if you will accommodate him by giving another month's time. You grant him this favor, and by so doing entirely release B and C from any further obligation on the note. On the other hand, if you had allowed the note to run a year or more past due (just so it did not become outlawed) B and C would not have been released so long as you did not change the terms of the note by making a definite agreement to give longer time.

292. **Partial Payment.**—When a partial payment is made on a note the amount should be endorsed on the back of the instrument at once. This should be done in the presence of the payer. The endorsement need not be signed and the following form will answer: "Paid on the within note, January 10, 1900, Fifty Dollars."

The payer should also take a receipt for the amount, as he would then have proof of the payment in case the note was lost or destroyed. A receipt alone would not be sufficient, however, in case the note or bill fell into the hands of an innocent purchaser before ma-

turity, as such purchaser could enforce payment in full without regard to the amount of previous payments.

293. **Payable to Fictitious Person.**—A note or check payable to a fictitious person is payable to bearer. If it be made payable to A & B it is payable to either of them, but if payable to A or B it is not negotiable because there is an uncertainty and it is payable to neither.

294. **Destroyed or Lost.**—In case a negotiable paper is lost or destroyed by accident, the owner can usually collect it by proving contents of the same and giving an indemnity bond for twice the amount of the lost paper.

This is required as a matter of protection and security to the person who pays the note, so that in case the note should ever be presented to him by an innocent holder he would not have to lose the amount already paid. The loss of a note or bill, however, does not excuse one from protesting it for non-payment.

295. **Identification.**—Strangers must be identified before they can cash any kind of negotiable paper, and sometimes one suffers great inconvenience and much embarrassment on this account. For example, suppose yourself to be in Boston, a total stranger, and out of money. You write to a friend and he sends you

a bank draft, but no one will cash it for you because they have no means of knowing whether or not it is a forgery. Should he send you the money by registered letter the postmaster would not deliver it to you until you found some one he was acquainted with to identify you. If sent by express it would be the same way, for the express agent could not tell whether you were the person to whom the package was addressed or not. Banks generally refuse to cash drafts or checks for strangers unless some one known to the bank endorses the paper, which of course amounts to a guaranty that the paper is good and will be paid promptly. The draft may of course be left with any bank for collection, but you will be at the inconvenience of having to wait until their reply is received.

296. **Alterations of Notes.**—In case there is any material alteration made in the note by the holder, it is rendered entirely void as to all persons except those who consented to the change. It has been held to be a material alteration to change the rate of interest by making it either larger or smaller than it originally was; by changing the date of payment, altering the amount payable, place of payment, removing the name of one of the makers or adding another name as maker; but in fact any change that materially affects the paper is regarded as an alteration. In order that an alteration be material, it is not necessary that it be

done with intent to cheat or defraud. In fact, a large majority of them are innocently made with the knowledge and sanction of the holder of the instrument.

297. **Non-Negotiable Note.**—A non-negotiable note is one that can not be transferred from one person to another so as to give the holder the right to sue on it in his own name. Of course a non-negotiable note may be sold or assigned, but the buyer takes it with all the defenses that existed against it in the hands of the original holder, and should he sue on same it must be done in the name of the original holder. Non-negotiable notes are not allowed days of grace.

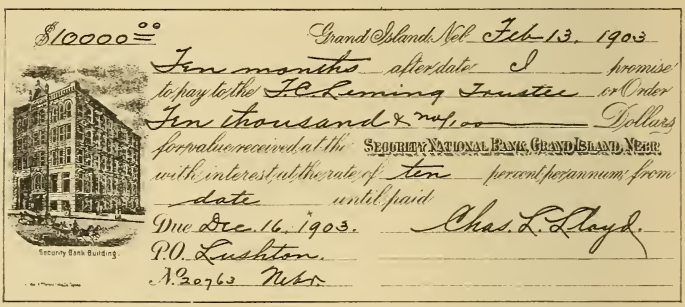
Any of the following provisions in a note will usually render it non-negotiable: When it is drawn payable to "A B," "A B only," "to the order of A B, trustee," "to the order of the estate of A B, deceased," when it provided that a penalty or attorney fee shall be paid in case the note is sued or not paid at maturity, when payable to "A B or order" and is not endorsed by A B, when it contains an agreement to renew at maturity, when it is past due, when an interest payment is past due although the principal may not be due, or when the note contains any stipulation which embarrasses its free circulation.

In most of the states one who endorses a non-negotiable note is held to incur no liability.

298. **The Consideration in Notes and Bills.**—It is customary in negotiable paper to refer to the consideration by the words "for value received," but this is not really necessary as the law presumes that the note or bill would never have been given except for value.

The consideration may, however, be disproved by competent evidence so long as the note or bill remains

No. 31.—Non-negotiable Note



in the possession of the original holder, but, as before stated, when the note is purchased by an innocent party for a valuable consideration before maturity and in due course of business, the consideration can not then be questioned.

299. **Law of Place.**—The general rule is that the law of the place where a negotiable paper is payable will be the law that governs in collecting it. For example, if you live in Nebraska and receive a note from Mr. B, who lives in Kansas, it will be necessary to conform to the laws of Nebraska in regard to the protest,

notice, rate of interest, etc., provided the note is made payable in Nebraska; but if made payable in Kansas then the law of that state will govern.

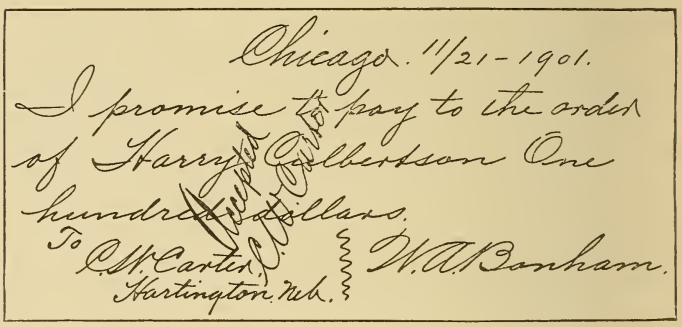
If a note is made in Nebraska without designating the place of payment, it is payable and may be demanded any place, but will still be a Nebraska note.

A contract which is intended to evade the law will not be upheld; for example, a note made in Nebraska can not draw more than ten per cent interest; but in order to secure a higher rate it might be made payable in Colorado, where there is no limit to the rate charged. If it could be shown that the object was to avoid the law, and that the intention was to collect it in Nebraska, the effect would be the same as if the note had been drawn payable in Nebraska.

300. **Ambiguous Instrument.**—It sometimes happens that an instrument is so poorly drawn, through ignorance or inexperience, that it is next to impossible to determine whether it is intended to be a note or a draft, and in cases of this kind the holder may regard the bill as either. The following is a good illustration of what is called an ambiguous or irregular instrument:

301. **I O U.**—As a rule, an obligation must contain an absolute promise before it will take the character of negotiable paper. If you give me a paper containing the following: "I O U $100" and sign your name to it, the law would not generally regard it as a negotiable note, but it would be simply the acknowledgement of a debt and would be binding as between the original parties.

No. 32.—Ambiguous Instrument



302. **Read Before Signing.**—Always read a paper through carefully before signing, no matter how much time it requires to do so. If it be an important instrument it is a good plan to take it home with you over night so that you may consider it carefully. Some people are afraid they will be regarded as inexperienced if they stop to read a document before signing it; but in fact just the opposite is true, for the more experienced a man is the more carefully he scrutinizes every paper before putting his signature to it.

303. **Be Prompt.**—The importance of being prompt in paying notes and other obligations at maturity can not be overestimated. Notes and other bills should be paid when due, but of course that is not always possible, and here is where many good people get the name of being unreliable and dishonest. They think there is no need of going to see the holder of the note, or of writing to him if he lives at a distance, when they have not the money to pay the bill; but this is a great mistake, for if they neither call nor write to him, he has good reason to suppose they do not intend to pay.

The proper thing to do when you are unable to meet a promised payment is to see the party or write to him immediately, giving a full explanation, telling him frankly your situation and stating as nearly as possible when you expect to be able to pay the bill. If this suggestion be carried out promptly, and with a show of good faith, an extension of time will be cheerfully given in nearly every case, and your reputation will not suffer by the transaction.

NEGOTIABLE PAPERS

REVIEW QUESTIONS

Define negotiable paper.

May a note be transferable and yet not be negotiable?

Name the necessary elements of a negotiable paper.

Who are the original parties?

Who are the subsequent parties?

Is a note good if signed with a lead pencil?

If a note is payable in wheat, may it be transferred?

How should the signature be affixed?

What are negotiable words?

What is meant by saying a note must be payable absolutely?

If any contingency exists, of what kind must it be?

Is a note without date valid?

If no time of payment is stated, when is the paper supposed to mature?

Do misspelled words affect the validity of the note?

Is there any real difference between a draft and a bill of exchange?

How many parties are there to a draft?

Distinguish between a foreign and inland bill of exchange.

What is a promissory note?

What is a joint and several note?

Define an accommodation note.

Define a judgment note.

What is a check?

What is meant by post dating?

What is an overdraft?

If a forged check is paid by the bank, who is the loser?

What is a certified check, and what is its object?

In what way may checks be made to answer as receipts?

What is a certificate of deposit?

Can payment of a check be stopped?

What is an endorsement?

What is its object?

Where is it made?

Name five of the most common forms of endorsement.

If you endorse a note "without recourse" and it is afterwards shown that the maker is a minor, are you liable for payment to the person you transferred it to?

In what order are endorsers liable?

What are some of the legal rights of endorsers?

Who is an innocent purchaser of a note?

Can the finder of a note or bill enforce collection of same?

What risk does a buyer take in purchasing a note after maturity?

What are days of grace?

Is grace allowed on all kinds of papers?

When the last day of grace falls on Sunday when will the paper mature?

What are legal holidays?

Do we have any national holidays?

What is an acceptance?

When should a draft be presented for acceptance?

Who should present it?

To whom should it be presented?

Are there any excuses for delay in presenting a draft?

What is a conditional acceptance?

What effect does this have on the drawer and endorsers?

What should be done in case of non-acceptance?

What is meant by protesting a bill?

Who is the proper person to protest it?

What is meant when the maker states in the note that he waives demand, protest, and notice of protest?

What is a quasi-negotiable paper?

Name a few belonging to that class.

What is a bill of lading?

What is a warehouse receipt?

What is a letter of credit?

What is a receiver's certificate?

Define collateral security.

Can the owner collect a note or bill if it be accidentally destroyed?

When does a note draw interest?

Must strangers be identified when they wish to cash drafts or checks?

What is an alteration of a paper?

Define non-negotiable paper.

How is the consideration of a negotiable paper expressed?

What is meant by law of place?

What is an ambiguous instrument?

Would the following be regarded as a negotiable note: "I O U $100. John Smith"?

What can you say about the importance of promptness in attending to your obligations?

CHAPTER XIX

INTEREST

304. **Definition.**—Interest may be defined as the price paid for the use of money or compensation for the detention of a debt.

This definition is not technically correct, for in its strictest sense interest is simply the use of money; yet it is better to adopt the first definition, as that represents the more common acceptation of the term.

305. **In the Dark Ages.**—In the early days of the world's history it was regarded as morally wrong to charge interest on money loaned, and the law prohibited the lender from demanding or receiving any interest whatever. This of course discouraged the loaning of money and kept commerce at the lowest ebb; but later, when the clouds of superstition began to roll back and men became more liberal in their views, these foolish ideas were swept aside, and commerce immediately started forward at a rapid pace. To-day if the loaning of money should cease, the wheels of trade would be instantly blocked, and the complex business of the nations would be completely paralyzed.

306. **Legal Rate.**—Each state regulates for itself the

rate of interest which shall be lawful within its borders. It generally fixes two rates, one called the legal rate the other the contract rate. The legal rate is the one allowed by law, and the contract rate may be collected if specifically mentioned in the agreement.

To illustrate: a note which reads "I promise to pay A B twenty dollars with interest," would draw 7 per cent in Nebraska, as that is the legal rate, but if the note reads "I promise to pay A B twenty dollars with ten per cent interest," this rate could be collected, as ten per cent is the contract rate allowed by the statutes. Any rate less than 10 per cent may of course be contracted.

307. **On What the Rate of Interest Depends.**—Any rate of interest agreed upon may be charged provided it does not exceed the limit fixed by law, but it is very natural that the borrower should wish to contract at the lowest possible rate, while the lender is anxious to receive the highest rate. It is fortunate for society that neither the borrower nor the lender is able to dictate the rate of interest, this being left to the higher law of supply and demand. If the lender has a large amount of money on hand and no one wants to borrow it, his income is entirely cut off and he is compelled to lower the rate of interest as an inducement to the borrowers. On the other hand, if he has but little

money and many people are wanting to borrow it, the tendency is to raise the rate of interest, as each borrower is in fact a bidder against the others.

308. **When Interest is Allowed.**—Interest is allowed on all forms of indebtedness when it is expressly stated in the contract that interest is to be paid. It is also allowed on all debts which are past due, and such claims will draw interest at the legal rate from the date of maturity until they are paid. *Example.*—You buy a large bill of goods with the agreement that the same will be paid January 1, but you let the matter run until July 1, or six months after maturity, therefore you must pay interest at the legal rate from January 1 to July 1.

Negotiable paper does not bear interest until after maturity unless it is so stated in the instrument itself.

309. **Law of Place.**—Contracts will usually draw interest according to the law of the place where they are to be performed. If no place of performance is specified or implied, the law of the place where it is made will govern.

310. **Compound Interest.**—The law looks with much disfavor upon compound interest, and while a promise to pay it does not generally invalidate the contract, yet such agreement will not usually be enforced by the courts.

311. **Usury.**—Usury may be defined as taking more than the lawful rate of interest, that is, more than the law allows.

312. **Penalty for Usury.**—The statutes of most of the states regulate the rate of interest which may be legally charged for the loan of money, but some of them leave the matter entirely to the contracting parties. In the last named class there is no such thing as usury, for any rate agreed upon may be collected.

313. **The Object of Usury Laws.**—The object of usury laws is to prevent those who loan money from oppressing the borrowers by charging an unreasonable rate of interest. Many poor people are at times compelled to borrow money, and it is thought that their necessity would make it easy for the lender to extort a high rate of interest from them. On the other hand, it is claimed by many that the rate of interest charged does not depend upon the law, but upon the supply of money as compared with the demand for it, and this argument seems to be supported by the fact that in some of the states where the usury laws have been entirely abolished the rate of interest charged is as low as in states where the most severe penalties are enforced.

USURY TABLE

STATES AND TERRITORIES	LEGAL RATE	CONTRACT RATE	PENALTY FOR USURY
Alabama	8 per cent	8 per cent	Forfeiture of all interest
Arizona	7 per cent	any per cent	None
Arkansas	6 per cent	10 per cent	Forfeiture of principal and interest
California	7 per cent	any per cent	None
Colorado	8 per cent	any per cent	None. Except pawnbrokers
Connecticut	6 per cent	6 per cent	None
Delaware	6 per cent	6 per cent	Double amount of principal
Dist. of Columbia.	6 per cent	10 per cent	Forfeiture of all interest
Florida	8 per cent	10 per cent	Forfeiture of all interest
Georgia	7 per cent	8 per cent	Forfeiture of excess of interest
Idaho	7 per cent	12 per cent	Forfeiture of interest
Illinois	5 per cent	7 per cent	Forfeiture of all interest
Indiana	6 per cent	8 per cent	Forfeiture of excess of interest over 6 per cent
Indian Territory	6 per cent	10 per cent	Forfeiture of principal and interest
Iowa	6 per cent	8 per cent	Forfeiture of all interest and costs, and 10 per cent of principal
Kansas	6 per cent	10 per cent	Forfeiture of double excess of interest over 10 per cent
Kentucky	6 per cent	6 per cent	Forfeiture of excess of interest
Louisiana	5 per cent	8 per cent	Forfeiture of all interest
Maine	6 per cent	any per cent	None for loans of $200 or more
Maryland	6 per cent	6 per cent	Forfeiture of excess of interest
Massachusetts	6 per cent	any per cent	None
Michigan	5 per cent	7 per cent	Forfeiture of interest
Minnesota	6 per cent	10 per cent	Forfeiture of contract
Mississippi	6 per cent	10 per cent	Forfeiture of interest
Missouri	6 per cent	8 per cent	Forfeiture of all interest
Montana	10 per cent	any per cent	None
Nebraska	7 per cent	10 per cent	Forfeiture of all interest and costs
Nevada	7 per cent	any per cent	None
New Hampshire	6 per cent	6 per cent	Forfeiture of three times the excess of the interest

USURY TABLE—*Concluded*

STATES AND TERRITORIES	LEGAL RATE	CONTRACT RATE	PENALTY FOR USURY
New Jersey	6 per cent	6 per cent	Forfeiture of all interest and costs
New Mexico	6 per cent	12 per cent	Forfeiture of twice the amount, and fine of $100
[10] New York	6 per cent	6 per cent	Forfeiture of contract; $1,000 fine; six months imprisonment
North Carolina	6 per cent	6 per cent	Forfeiture of double amount of interest
North Dakota	7 per cent	12 per cent	Forfeiture of double the interest
Ohio	6 per cent	8 per cent	Forfeiture of excess of interest over 6 per cent
Oklahoma	7 per cent	12 per cent	Forfeiture of interest
Oregon	6 per cent	10 per cent	Forfeiture of interest, principal, and costs
Pennsylvania	6 per cent	6 per cent	Forfeiture of excess of interest
Rhode Island	6 per cent	any per cent	None
South Carolina	7 per cent	8 per cent	Forfeiture of double excess
South Dakota	7 per cent	12 per cent	Forfeiture of interest
Tennessee	6 per cent	6 per cent	Forfeiture of excess of interest
Texas	6 per cent	10 per cent	Forfeiture of all interest
Utah	8 per cent	any per cent	None
Vermont	6 per cent	6 per cent	Forfeiture of excess of interest
Virginia	6 per cent	6 per cent	Forfeiture of interest
Washington	7 per cent	12 per cent	Forfeiture of double illegal interest
West Virginia	6 per cent	6 per cent	Forfeiture of excess of interest
Wisconsin	6 per cent	10 per cent	Forfeiture of all interest
Wyoming	8 per cent	12 per cent	Forfeiture of all interest and costs
Ontario	6 per cent	any per cent	None
Quebec	6 per cent	any per cent	None

[10] Demand loans with collateral security may bear any rate agreed upon in writing, provided the loan be $5,000 or more.

314. **What Constitutes Usury.**—In order to establish a case of usury it must be shown that there was an unlawful or usurious intent. If you make a miscalculation and collect more interest than the law allows, it can not be said that you are a usurer, but if you know nothing of the law and charge a higher rate than is legal you will be held as guilty.

315. **Mistake of Fact.**—It may be well to note at this point that the law makes a great distinction between a mistake of fact and a mistake of law. As a rule it will not allow a person to be injured on account of a mistake as to the facts, but everybody is supposed to know the law, and if he makes a mistake as to what the law is, he will not generally be excused.

To illustrate: suppose I borrow from you $900 for one year at 10 per cent interest, and you calculate the interest to be $108 and I pay the same. While this is an overcharge of $18 it is not usury, as it is a mistake of fact, but of course you would have to return the $18 to me.

On the other hand, suppose neither one knows the usury laws of Nebraska, and I borrow $900 of you at 12 per cent. This would be a mistake of law and would be held as usury, for the contract rate is only 10 per cent.

316. **Efforts to Conceal Usury.**—Those who make a

practice of charging usury oftentimes resort to many kinds of subterfuges in order to conceal the facts. A very common plan, and perhaps the most difficult to prove, is where the lender pretends to act for a second party. For example, you go to Mr. B, a loan agent, to borrow $50. He informs you that he has no money to loan, but a friend of his will let you have the money at 10 per cent interest provided he (Mr. B) endorses the note with you, and for this endorsement he will charge you $5.

This can not be regarded as usury unless it can be shown that there is a full understanding between Mr. B and his friend and they simply use this method to avoid the usury law.

317. **Interest in Advance.**—Some people seem to think they can avoid the penalty of usury by collecting the interest in advance, but such is not the case, although it may be a little more difficult of proof. It is not regarded as usury, however, to collect interest in advance provided it does not exceed the rate named by law.

INTEREST AND USURY

REVIEW QUESTIONS

Define interest.

What is the legal rate?

What is the contract rate?

On what does the rate depend?

When is interest allowed?

Can compound interest be collected?

Define usury.

What is the penalty for usury in your state?

What is the object of usury laws?

Do they answer the purpose for which they are made?

What constitutes usury?

What is the difference between a mistake of fact and a mistake of law?

CHAPTER XX

SALE OF PERSONAL PROPERTY

318. **Personal property** may be defined as any kind of movable property, and it consists of all forms of value not coming under the title of real estate. It is sometimes designated as chattels.

319. **Kinds of Personal Property.**—Personal property is of two kinds, things in action and things in possession. In the law books they are generally called *choses* (shoses) *in action* and *choses in possession.*

If you say you have things in possession it means that you not only have in your own right the title to the articles in question, but you also have actual possession of same; but if you say you have things in action, it refers to the personal property which you own but have not the possession of, such as notes, accounts, etc.

320. **A sale** is a contract and must of course have all the elements of a contract. It consists of the transfer of the ownership of goods or chattels from one person to another for a specified sum of money. It is not a sale if goods be exchanged for other goods, but it is then a barter or trade.

321. **Parties.**—The parties to a sale are the buyer

and seller, or, as they are sometimes called, the vendor and vendee. Any one who is competent to make contracts in general is competent to make a sale.

322. **Title.**—The rule of law is that no man can sell or convey to another a better title to property than he himself possesses, and if the seller has no title the buyer will receive none. So it becomes a very important matter in buying anything from a stranger to know that he has a good title to the property. There is only one exception to this rule, and it is discussed under negotiable papers.

323. **Contract of Sale and to Sell.**—It is well to notice the difference between an actual sale and a contract to sell at a future date. Every genuine sale is an executed contract, although the payment or delivery of goods may be deferred to some future time; but a contract to sell is an executory contract and consists merely of an agreement to sell at a specified future time. It does not transfer the title to the property or confer upon either party the rights or obligations of a sale. *Example.*—You offer me $100 for a horse and I accept. This is a sale, and the contract is executed or completed and the animal belongs to you, but if you contract with me now to buy my horse next April for $100 that would be an executory contract or one to be performed in the future. If the horse should

die before April it will be my loss, not yours, as the title is still vested in me.

324. **Sale to be Followed by Delivery.**—If nothing is said to the contrary, the law presumes that it is the intention of the parties that the sale should be immediately followed by the payment of the money and delivery of the goods. Sometimes the contract provides that the delivery is to be made at a particular time and place, but if no term of credit is agreed upon the seller may insist upon receiving full pay for the goods before he gives possession of them. Should the buyer refuse or neglect to pay for the goods immediately on completing the bargain or at the time agreed upon, the seller may rescind the sale at once.

325. **Subject Matter.**—This is the property which is bought or sold, and as a general rule a person competent to contract is at liberty to dispose of any property he may possess, but it must have an actual or potential existence although it need not be in the seller's possession.

326. **Actual existence.**—If the article has an actual existence, even though it be in the hands of an agent in another locality, a sale may be made. If, however, the thing once existed, but at the time of the agreement it had been destroyed, the sale is void for the reason that the seller, having no title, can not transfer

one to the buyer. You sell to me a stock of goods for $3,000 and I pay you the money and take a bill of sale, but we afterwards learn that the stock was burned an hour before the sale. It is clear that you did not transfer to me a title to the goods, for you had none yourself, and I am entitled to have my money returned. When the thing sold is only partially destroyed there is some question as to whether the sale is valid as to the goods remaining; but the better opinion seems to be that the buyer has the right of option to either take the goods remaining at a reasonable price or dissolve the contract *in toto*.

327. **Not Yet in Existence.**—Formerly no sale was valid unless the thing sold was at the time actually in existence; but in later years the law has been more liberally construed in regard to this matter, until now the expectation or hope of profits based upon existing rights may be the subject of a sale; for example, the grain one expects to reap from a growing crop, or fruit from an orchard, or the wool to be clipped from certain sheep, the profits from a particular contract, etc.

328. **What is Not Sufficient.**—It should be remembered that to make a valid sale of a thing not in actual existence, the seller must at the time of the sale be the owner of the germ or nucleus from which the

property is expected to develop or grow. In the language of the law, it must have a *potential existence.*

It would not do to sell the grain expected to grow upon the field belonging to a neighbor, even though you contemplated buying the farm. You could not sell the profits expected to arise from a certain contract unless the contract itself had already been made; neither could you legally sell the grain expected to grow upon a certain field until the seed had been planted and there were germs in existence from which the crop could grow. It is, however, true that if a person sells a thing he does not own, but afterwards acquires a title to it, the ownership immediately passes to the buyer.

329. **Statute of Frauds.**—It will be remembered that one of the provisions under the "statute of frauds" states that a contract for the sale of personal property to the amount of $50 or over must be in writing and signed by the party to be charged, unless some part of the purchase price is paid or some of the goods are delivered. No special form of writing is necessary, and any memorandum which clearly sets forth the contract will answer the purpose if properly signed; but in important transactions it is often desirable to employ a more formal document called a bill of sale, the

signing of which is usually witnessed or acknowledged by a notary public.

No. 33.—Form of Bill of Sale

Know All Men by These Presents: That I, John E. Mason, of Chicago, Ill., of the first part, for and in consideration of the sum of two thousand one hundred twenty-five dollars ($2,125) in good and lawful money of the United States, paid in hand to me, on or before the sealing of these presents, by Edward K. Sweetering, of the same place, of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators, and assigns, twenty-five horses, as mentioned and particularly described in the schedule hereunto annexed.

To Have and to Hold the same unto the said party of the second part, his executors, administrators, and assigns forever. And I do covenant and agree, to and with the said party of the second part, that I am the owner and have the right to transfer said property, and will defend the same against any person or persons whomsoever.

In Witness Whereof, I have hereunto set my hand and seal this 30th day of March, in the year of our Lord, one thousand eight hundred and ninety-nine.

John E. Mason [seal].

State of Illinois, }
County of Cook. } *ss.*

On this 30th day of March, in the year of our Lord, one thousand eight hundred and ninety-nine, before me, the subscriber, personally appeared John E. Mason, to me personally known to be the same person described in and who executed the within instrument, and acknowledged that he executed the same.

Charles H. Whiting,
[seal] *Notary Public.*
My commission expires March 20, 1900.

330. **Delivery.**—When the sale is completed, the buyer is entitled to immediate possession of the goods upon paying the contracted price. If the sale be on

credit, he is entitled to the goods at once without the payment.

The matter of delivery is very important, and just what constitutes a sufficient delivery is sometimes hard to determine. The delivery is generally understood to mean the actual handing over of the goods, but more frequently it refers to the change of title. There is a certain point in the transaction at which the risk of ownership is shifted from the seller to the buyer, and it is sometimes of the greatest importance to know exactly when the change takes place.

331. **When Something Remains to be Done.**—It sometimes happens that the goods have been selected, marked, and set aside for the buyer and yet there remains something to be done before the delivery is complete. It may be measuring, weighing, crating, or delivering the same at the home of the buyer. In case the goods are stolen or burned before they are actually turned over into the hands of the buyer, it is then very important to know at what exact point the ownership changes from seller to buyer, for the loss must be borne by the owner.

332. **When the Title Passes.**—It seems to be the general rule that the title does not pass from seller to buyer as long as there are any conditions of the sale unperformed. For example, you purchase from Mr. B

a bin of wheat at $1 per bushel, the same to be measured and paid for the next day, but before the wheat is delivered Mr. B fails, and the wheat is attached by his creditors. You can not get possession of the wheat, for the title has not yet passed to you.

333. **Delivery to Carrier.**—When goods are ordered from a distant place it is regarded as sufficient delivery when they are turned over to the carrier properly packed and marked, but the seller should follow directions and send by the route ordered, or, in the absence of instructions on this point, he should send by the shortest and most convenient route.

334. **Constructive Delivery.**—It often happens that the thing sold is so large as to make a manual delivery impossible or inconvenient, and in such cases a constructive delivery is sufficient. This is sometimes called symbolical delivery and consists of simply giving the party access to the goods. For example, turning over the key to the warehouse in which the goods are stored or transferring a warehouse receipt for grain stored, or it may consist of merely pointing out the goods and thus indicating the delivery.

335. **Earnest.**—Oftentimes when goods are sold a part payment is made to bind the bargain. This payment is called an earnest.

336. **Sale by Sample.**—A sale by sample is only con-

ditional, and the buyer has a right to compare the goods with the sample, and should there be any difference he may repudiate the contract if he prefers. The same principle is true of goods sold "on approval" or "on trial." If a person receives goods on any of the conditions above named, he will be expected to notify the seller within a reasonable time, provided he does not wish to keep the same, for should he continue possession of them without giving any notice to the owner, he will be presumed to be satisfied, and the sale will become valid.

337. **Warranty.**—Warranty is an agreement either expressed or implied that the thing sold will be just as represented. This refers to both quality and title of the goods. It should be borne in mind that every statement about the goods is not to be construed as a warranty. For example, you go into a store to buy some butter and the clerk shows you some and remarks that it is the best in the market. This is not a warranty, for he does not say the butter is of good quality but only assures you that there is no better article in the market, and then leaves you to judge for yourself whether or not you want it.

338. **Let the Buyer Beware.**—It is a well known rule in law that the buyer of personal property in the absence of fraud or special warranty purchases at his

own risk. He has the opportunity of inspecting the article and is presumed to understand the kind of goods he is buying. *Caveat emptor* is a Latin phrase much used in law to express this idea. It means, let the purchaser examine the article he is buying and act on his own judgment; in other words, let him beware.

The law will not undertake to protect any one who closes his eyes to glaring defects which are apparent to a casual observer, but it will presume that he bought the article with the full knowledge of its condition. Thus you buy a book after examining it and seeing that the cover is gone. Even though the seller warranted that the book was in good condition, he would not be liable to you for this defect.

339. **When Warranty Should be Made.**—An offer to warrant the goods is binding if accepted at the time of the sale, but if made after the sale is completed it is void for lack of consideration.

Suppose you buy a horse for $100, and after paying for same you ask the seller if he warrants the animal to be gentle and kind, and he replies that he does. This is of no effect, for the warranty is not based upon a consideration.

340. **When the Warranty of Quality is Implied.**—In the absence of any special agreement, a warranty of quality is always understood or implied when goods

are ordered by sample or description, or when they are ordered for a particular purpose and the buyer relies on the judgment of the seller in selecting the article. In any of the cases mentioned, if the thing purchased be not as represented it may be refused or returned.

341. **Warranty of Title Implied.** —Under all ordinary circumstances a warranty of title is implied when goods are sold, but in case they are sold by an officer of the law or a trustee no warranty of title is implied, and the buyer should remember that he buys only such right or interest as the seller has.

342. **Lost Property.**—Any one who finds property that has been lost can hold it and has a good title to it as against every one except the real owner. The real owner has a right to the property wherever it is found, even though it be in the hands of an innocent purchaser.

SALE OF PERSONAL PROPERTY

REVIEW QUESTIONS

Define a sale of personal property.

Is a sale a contract?

What is a chose in action?

What is a chose in possession?

May property not in existence be the subject of a sale?

Distinguish between a contract of sale and a contract to sell.

Can a man transfer a better title to a buyer than he has himself?

What is potential existence?

What is bill of sale?

How may the delivery be made?

What is constructive delivery?

What constitutes delivery to a carrier?

When does the title pass to the buyer?

What is an earnest?

What is a warranty?

What is meant by "Let the buyer beware"?

Is a warranty good which is made after the sale?

CHAPTER XXI

CHATTEL MORTGAGES

343. **Definition.**—A chattel mortgage is simply a bill of sale to certain personal property described, stating that the property has been sold absolutely to the buyer named, but that the sale will become null and void provided the seller pays a certain sum mentioned in the mortgage at a specified time.

344. **Parties.**—The party giving the mortgage is called the mortgagor (mor′-gāj-or), and the party to whom it is given is called the mortgagee (mor-ga-je′).

345. **Equity of Redemption.**—A chattel mortgage is given to secure the payment of a debt, and while the mortgagor states that he sells and transfers to the mortgagee all his interest in the property described, yet, as a matter of equity, the law in most of the states provides that the mortgagor has a right to redeem the property at any time before the same has been sold to satisfy the debt.

346. **Who May Give a Mortgage.**—The owner of personal property generally has the right to mortgage the same provided he be competent to contract, but in Nebraska and some other states, household goods

for use in the family can only be mortgaged or sold by both the husband and wife signing the instrument of conveyance. The rule is the same whether the goods are owned by the husband or wife or jointly by both of them.

347. **What May be Mortgaged.**—The general rule is that an individual may mortgage any personal property which he owns, but can not mortgage things to which he has no title or things which are not in existence. You could not therefore give a mortgage to-day on a certain described horse and carriage which you do not own, but which you expect to purchase to-morrow from Mr. A. It is generally held, however, that such a mortgage would become operative as soon as you acquired a title to the property described in it.

348. **Growing Crops.**—It is usually held that a crop may be mortgaged as soon as the seed is in the ground, and some authorities hold that a mortgage is valid even if given before the crop is planted. The last named opinion does not seem to meet with general favor, and therefore should not be trusted except when it is approved by state legislation.

349. **Filing.**—A chattel mortgage should be filed or recorded promptly, as required by the laws of the state. The mortgage would be valid as between the original parties without filing, but it would be void as

against creditors of the mortgagor or *bona fide* purchasers unless it was filed or the property delivered to the mortgagee.

In some states chattel mortgages are recorded, that is, copied in full on the books of record, the same as a deed or real estate mortgage, but in Nebraska and most of the western states the original mortgage or a certified copy of same is simply filed or deposited in the office of the recorder.

350. **The Object of Filing.**—The principal object of filing a chattel mortgage is to give notice to the public so that any person interested may ascertain the facts regarding the ownership of the property. It should be noted that filing does not of itself assure the validity of the mortgage, for it may be set aside by creditors of the mortgagor if it can be shown that it was given with fraudulent intent.

351. **Sale of Mortgage.**—A mortgage is usually given to secure the payment of a negotiable note, and in that case it may be sold and assigned from one person to another, and the buyer will have a legal right to sue and foreclose the same in his own name.

352. **Sale of Mortgaged Property.**—With the written consent of the mortgagee, the mortgagor may sell the property subject to the incumbrance, and the pur-

chaser will succeed to all the rights possessed by the seller.

Any one guilty of disposing of mortgaged personal property without the written consent of the holder of the mortgage is subject to a very severe penalty consisting of a heavy fine and imprisonment in the penitentiary.

353. **Foreclosure Before Due.**—Most chattel mortgages contain a provision giving the holder the privilege of taking possession of the property and declaring the debt due at any time he may feel himself insecure or unsafe. Many decisions hold that the mortgagee must have reasonable grounds for asserting that he is unsafe, while others hold that he has a right to take possession of the property at any time.

354. **Discharge of Mortgage.**—When a chattel mortgage has been paid in full it may be discharged by the mortgagee, his agent, or assigns by making an entry to that effect on the margin of the records where it is filed. If inconvenient to go personally to the office of the recorder or clerk, a written certificate may be given and acknowledged before a notary public, stating that the mortgage of a certain date and amount has been satisfied. This certificate should be sent to the clerk for record. (See form at end of this chapter.)

SYNOPSIS OF LAWS RELATING TO CHATTEL MORTGAGES

355. **Colorado.**—Chattel mortgages of $2,500 or less are valid for two years. Those made for $20,000 or less are good for five years, and those for more than $20,000 will remain valid for ten years.

If the amount of the mortgage exceeds $2,500, the mortgagee must annually record a statement setting forth that the mortgage secures a *bona fide* debt, and also stating how much has been paid on same, as well as the amount due. Mortgages on merchandise are void unless the goods are actually delivered to the mortgagee. Disposing of mortgaged property is larceny.

356. **Iowa.**—Chattel mortgages must be signed, acknowledged, and recorded like deeds. If the mortgage covers property which is exempt from execution, it must be signed by both husband and wife if the owner is married. A mortgage is good for ten years after maturity. The mortgagor is entitled to the possession of the property, provided it is so stipulated. If properly drawn, a chattel mortgage will cover future acquisitions to a stock of merchandise.

357. **Montana.**—A chattel mortgage is valid for sixty days after maturity, provided the whole time does not exceed fourteen months. If it runs over fourteen months, the mortgagee must file an affidavit describing the mortgage and stating the amount paid on same, the amount yet due, and the length of time for which it was extended, which must not exceed one year.

It must also state that the debt was not made, renewed, or extended to hinder, delay, or defraud other creditors.

358. **Nebraska.**—A chattel mortgage is good for five years. Verbal mortgages are good between original parties. To sell or transfer mortgaged personal property without the consent of the mortgagee is punishable by heavy fine and imprisonment. The same is true of removing the mortgaged property from the county with intent to defraud. Unless a chattel mortgage is accompanied by immediate delivery of the goods and continued possession of same, it is void as against all creditors of mortgagor or subsequent purchasers or mortgagees, unless such mortgage or copy of same has been filed. Chattel mortgages need not be acknowledged unless they convey household goods used by the family, and in that case both husband and wife must sign the mortgage. This is true whether the property belongs to the husband

or the wife or both of them. Signatures to chattel mortgages do not have to be acknowledged before a notary public.

359. **North Dakota.**—A chattel mortgage on property not yet acquired or in existence is valid, but as to crops, it is only valid on the crop next maturing after the delivery of the mortgage, except when it is given to secure the purchase price or rental of the premises upon which crops are grown, in which case the mortgage may cover the crops for a period of years.

Chattel mortgages taken by insurance companies to secure the payment of premium are void unless written on a paper separate from the application for insurance. Chattel mortgages must have two witnesses. Chattel mortgages must be filed or they will be void as against creditors of the mortgagor or subsequent purchasers or mortgagees, and even when filed will cease to be valid against them after the expiration of three years, unless within ninety days next preceding the expiration of such time a copy of the mortgage with a sworn statement of the debt remaining be filed.

360. **South Dakota.**—Chattel mortgages must be filed or they will be void as against a third party, and even if filed they will cease to be valid after three years from the date of filing, unless within thirty days next preceding the expiration of said three years, a copy of the mortgage and sworn statement of the amount still due be filed. The filing of this statement renews the mortgage for three years more.

Mortgage on personal property must be signed by two witnesses. The mortgagee must make and deliver to the mortgagor a true copy of the mortgage without additional cost, and unless the mortgage contains a statement over the signature of the mortgagor that he has received such copy it shall be void and can not be filed.

A chattel mortgage can be renewed or extended only on an agreement signed by the mortgagor.

361. **Utah.**—A mortgage on personal property is void after one year from filing the same, unless within thirty days next preceding the expiration of said year, and each year thereafter, the mortgagee shall file an affidavit showing the amount then due. The whole time can not, however, exceed five years. Both husband and wife must sign when mortgaging any property which is exempt.

362. **Wyoming.**—Chattel mortgages must be executed and ac-

knowledged the same as real estate mortgages, but they are filed instead of recorded. A chattel mortgage is good until sixty days after maturity; then it becomes void except as to the original parties, unless during the sixty days an affidavit is filed stating the amount yet due. Such an affidavit has the effect of renewing the mortgage for another year.

No. 34.—Chattel Mortgage

Know All Men by These Presents: That I, *Carl Titus*, of the County of *Clay* and State of *Nebraska*, in consideration of the sum of *Two Hundred Dollars* to me in hand paid by *Gail Munyon*, of *San Juan County*, State of *Colorado*, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his heirs, and assigns, etc., the following goods and chattels, to-wit:

(Here carefully and fully describe the property.)

To Have and to Hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever. Upon condition, however, that if the said party of the first part shall pay to the said party of the second part, his heirs, assigns, etc., his *Two* certain promissory notes, dated, *Grand Island, Nebraska, June 10, 1905*, and described as follows:

One for *One Hundred Dollars ($100)* payable *July 10, 1905.*

One for *One Hundred Dollars ($100)* payable *September 10, 1905.*

With interest at the rate of ten per cent per annum from date until paid according to the tenor thereof, then these presents to be void, otherwise in full force.

And I, the said party of the first part, do hereby covenant and agree to and with the said party of the second part that in case default is made in the payment of the above mentioned promissory note, or any part thereof, or in case of my attempting to dispose of or remove from said County of *Clay* the aforesaid goods and chattels, or any part thereof, or if at any time said mortgagee or his assigns should feel unsafe or insecure, then, and in that case, it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority thereof, and to sell the same at pub-

lic or private sale, with or without advertisement, as the holders may deem best, advertisement and sale according to law being hereby expressly waived, or so much thereof as shall be sufficient to pay the amount due, or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property, together with a sum equal to ten per cent of the amount due, as liquidated and stipulated damages, if the notes hereby secured are not paid within thirty days after maturity, which amount shall be in full of such damages. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

I live on Section *10*, Township *12*, Range *9*, County of *Clay*, Nebraska.

Witness my hand this 10th day of June, 1905.

WITNESS: CARL TITUS.

HARRY SPARLING.

CLAUDE CONSTABLE.

No. 35.—RELEASE OF CHATTEL MORTGAGE

GRAND ISLAND, NEB., Sept. 10, 1905.

I acknowledge satisfaction of a Chattel Mortgage for *Two Hundred Dollars ($200)* given by Carl Titus to Gail Munyon on the 10th day of June, 1905, and I hereby authorize the cancellation of the same.

Attest: ALBERT DENMAN, GAIL MUNYON.

[SEAL.] *Notary Public.*

CHATTEL MORTGAGES

REVIEW QUESTIONS

What is a chattel mortgage?

How does it differ from a bill of sale?

What are the parties called?

What is meant by equity of redemption?

Who may give a chattel mortgage?

Must both husband and wife sign same?

What may be mortgaged?

Is mortgage valid on things not in existence at time mortgage is given?

Is mortgage on crops not yet planted good?

Is it necessary to file or record a chattel mortgage?

What is the object of filing a mortgage?

Is it void if not filed?

What is the difference between "filing" and "recording"?

Does filing assure the validity of the mortgage?

May a mortgage be sold?

May mortgaged personal property be sold?

What is the penalty of doing so without the written consent of the mortgagee?

What is foreclosure of a mortgage?

May the holder to the mortgage declare it due at any time?

How is a mortgage discharged?

CHAPTER XXII

GUARANTY OR SURETYSHIP

363. **Guaranty.**—A guaranty is an agreement by which one person undertakes to become responsible for the payment of some debt or the performance of some act contracted by another.

364. **Guarantor's Contract.**—A guarantor may either sign a separate paper entirely, or he may write the guaranty on the original contract, but whichever plan he uses, he is not liable until the party for whom he signs has failed to carry out the contract.

365. **Must be in Writing.**—The "statute of frauds," which has been discussed in a previous chapter, provides that every special promise to answer for the debts, wrongful acts, or misdoings of another must be in writing; therefore all contracts of guaranty must be written and signed by the guarantor; otherwise they can not be enforced.

366. **Consideration.**—A guaranty, like any other contract, must be supported by a consideration, but if the contract of guaranty is made at the same time the principal contract is entered into, the same consideration will do for both, but if made afterwards it must have a separate consideration. To illustrate,

you offer to loan me $100 on my note with Henry Brown as guarantor. I draw up a note, and Brown writes on the back of same as follows: "For value received I hereby guarantee the payment of this note. Henry Brown." This guaranty is binding, and the loan of $100 is the consideration of both the note and the guaranty. On the other hand, if you had made the loan to me on my own note and afterward induced Brown to sign as guarantor he could not be held unless there was a new consideration.

367. **Right of Guarantors.**—Whenever a guarantor has been compelled to pay a debt, he may proceed at once to recover the amount from the principal, that is, the person for whom he guaranteed the obligation.

The court construes a contract of guaranty very strictly and adheres with the utmost precision to the exact terms of the agreement.

Should the guarantor pay a debt for his principal, he has a right to demand from his creditors the securities he holds, but he can not require an assignment of the debt itself, for that he has paid and discharged.

368. **A Minor May be a Principal.**—Under ordinary circumstances the liability of the guarantor can not be greater than that of his principal, although there are a few important exceptions to this rule, among them being the case of a minor's contract. The minor

of course is not always liable for his obligations, but a person of legal age who signs with him is liable even though the minor could not be held for the debt.

369. **The Strict Terms of the Contract.**—As before stated, the contract of guaranty is construed very strictly. Thus, a guaranty of the payment of a note to be given by Mr. A will not hold if the note be signed by both A and B. Again, should the guaranteed party vary materially the conditions of the original contract, the guarantor is released. A bond was given for faithful performance of duties as deputy collector of taxes for eight certain townships, but later the certificate of appointment was changed so as to extend to another township without the consent of the guarantor. The supreme court of the United States held that this alteration discharged the guarantor.

370. **Negotiability of Guaranty.**—There seems to be considerable conflict of authority as to whether a guaranty of a negotiable note is itself negotiable. It was held by Judge Story and others that if the guaranty is written on the note itself it is negotiable, but recent decisions in many of the states are inclined to the opposite view.

371. **Continuing Guaranty.**—This is a form of guaranty which is intended to cover more than one trans-

action. The following letter would be a continuing guaranty:

No. 36.—Letter of Guaranty

Chicago, Ill., March 1, 1901.

Story & Clark Piano Co., Chicago, Ill.

Gentlemen—Please sell to the bearer, Mr. Chas. R. Williams, on the customary terms of credit, such goods as he may desire in any amount not exceeding one thousand dollars, and I hereby guarantee the prompt payment of the same.

This is intended as a continuing guaranty.

Yours respectfully,

R. L. Hampton.

372. **Guaranty of Payment.**—This form of guaranty is perhaps more frequently used than any other, and it consists of an absolute and unqualified promise that the debt guaranteed shall be paid at maturity. The following form may be used: "For value received I hereby guarantee the payment of the within note. J. A. Munro."

373. **Guaranty of Collection.**—It should be remembered that guaranty of collection is quite different from guaranty of payment. In the latter case you give your guaranty that the note will be paid at maturity, and if it is not you are liable at once, but in a guaranty of collection you simply guarantee that the note can be collected, and no one can say for a certainty that it can not until the maker and endorsers are sued and all legal means are exhausted; then if it

still remains unpaid, action may be commenced against the guarantor.

If the maker has moved from the state or is well known to be insolvent, the action need not be brought against him, but the holder may proceed against the guarantor at once.

The following form may be used: "For value received I hereby guarantee the collection of the within note. J. A. MUNRO."

374. **Warranty, Guaranty, and Surety.**—These terms being somewhat similar in meaning are often confused, although there is a wide difference in their application.

You warrant a horse to be gentle, or a watch to be solid gold, or cloth to be all wool; so a warranty deals only with the thing now in existence; but you guarantee things which are to happen in the future, for example, you sell fruit trees and guarantee them to grow; you build a house and guarantee to have it finished before a certain date.

A person who signs as a guarantor makes a second contract and is never jointly liable with his principal. His contract or guaranty may be upon a second sheet of paper, while a surety always signs the same paper as his principal and is jointly liable with him. For example, you sign a note with me as surety. If I do

not pay when due the holder may at once sue both of us jointly. This could not be done in case of guaranty, as the guaranty is regarded as a separate contract which must be sued alone; but the surety is bound with the principal practically the same as a co-maker.

375. **Rights of Surety.**—The surety is given certain rights by the law, the most important of which are as follows:

1. He may pay the debt himself and bring action against the principal at once.

2. He may bring an action to compel the principal to pay the creditors.

3. If he be a cosurety and pays the debt, he has the right of contribution.

4. He has the right of subrogation.

376. **Contribution.**—If you sign as surety on an obligation with two or more cosureties or coguarantors, you may be compelled to pay the entire debt; but you have the right of action against the others to make them contribute their proportion of the loss. This is called contribution. It is well to remember that the right of contribution does not include the costs of the suit, but only the original obligation.

377. **Subrogation.**—This means to succeed to the right of another person whose debt you have paid.

When the surety pays the debt of his principal he has a right to demand all the securities of whatever kind held by the creditor for the payment of the debt. This is called the right of subrogation.

378. **How Surety May be Discharged.**—There are various ways in which a person who has signed as security may be discharged from his obligation, but the most common are as follows:

1. Fraud practiced on the surety.
2. Release.
3. Alteration.
4. Extending time to principal.
6. Parting with security.
7. Merger.

379. **Fraud Practiced on Surety.**—When any one signs as surety under a misrepresentation or concealment of the facts, or when any species of fraud is practiced upon him either by the principal or the creditor in order to induce him to sign as surety, the contract becomes absolutely void as to all parties having knowledge of the fraud.

380. **Alteration.**—Should the holder of a contract make any change or material alteration in the contract, it would have the effect of releasing the surety as well as the principal maker. This in fact would

be a species of fraud and would make the contract void.

381. **Extending Time to Principal.**—As explained in a previous chapter, whenever the holder of a note makes a definite contract with the maker for a consideration to extend the time of payment, this act releases all other signers as well as all who have signed as guarantors or surety. Simply neglect or forbearance to bring an action against the principal will not release the surety, neither will a mere promise to give more time. For example, you hold my note for $50 due to-day with Brown as surety. I go to you and ask for sixty days' more time, and you promise to wait that length of time. This does not release Brown, for the agreement to give more time has no legal standing as it was not based upon a consideration, and, notwithstanding your promise, you have a legal right to sue me at any time. Had I agreed to pay a higher rate of interest or give you anything of value in consideration of the extension, the surety would have been released.

382. **Parting With Security.**—When the surety pays a debt for his principal he is by the right of subrogation entitled to all the securities, rights, etc., which the creditor himself could enforce. It is therefore the duty of the creditor to carefully guard all his

security, as he does not hold this security for himself alone, but also for the surety in case he must pay the obligation.

You hold a note against me for $500 on which B is surety, and you also hold as collateral a chattel mortgage from me on some cattle. Should you, for any reason, release the chattel mortgage without the consent of B, he would be released to the extent of the value of the cattle.

383. **Merger.**—This means paying one debt by creating another of a higher form. For example, you hold a note against A on which B is surety. At maturity A can not pay the note, but he gives you a new note secured by a mortgage on his farm, the old debt becoming merged into the new one, and this act releases B, who is surety. If, in the above case, you did not wish to release B from the old note, you could retain them both and regard the new note and mortgage as collateral security to the old one.

384. **How Guarantors May be Released.**—Any act that will release a surety will also release a guarantor. A guarantor may also be released sometimes by failure to make demand for payment at maturity or to send notice of non-payment.

385. **Order of Liability.**—The order of the liability of signers on a note or contract is as follows:

1. Maker or makers.
2. Surety.
3. Guarantor of payment.
4. Guarantor of collection.
5. Endorsers.

386. **Compromise.**—It sometimes happens that a surety compromises the debt and settles it by making only a partial payment, and in that case he can recover from his principal only the amount he actually paid and not the face of the debt discharged. It makes no difference whether he paid it voluntarily or was compelled to pay it; the rule is that he can not be allowed to make a profit out of the venture.

To illustrate: suppose A is surety for B on a note of $600. At maturity B fails to pay it, and A compromises by paying $500. He will not now be able to compel B to pay him the full $600, for he would then be speculating in the misfortunes of his friend whom he is pretending to help.

387. **Bonds.**—A bond is an instrument by which one person binds himself, his heirs, executors, and administrators to pay a certain sum of money to another. This is usually a conditional promise and states that the same shall become void provided the maker performs a certain specified act mentioned in the bond, otherwise it shall remain in full force. In bonds of

this kind the party bound is called the obligor and the party to whom he is bound is called the obligee. The sum mentioned in the bond is called the penal sum or penalty.

388. **Amount Which Can be Collected on a Bond.**—While a bond recites a specific amount which is to be paid in case the conditions of the contract are not carried out, yet the courts will not strictly enforce the payment of this amount, but will compel the obligor to pay only the amount required to indemnify the obligee for the loss he has sustained by the failure of the obligor to meet the conditions of the bond.

Suppose A works for me and you sign his bond for $5,000, to guarantee his honesty, ability, and faithfulness. A turns out to be a rascal and steals money and property from me. I can not recover from you to exceed $5,000, no matter how much the loss may be, and if the loss be less than that amount I can recover only the exact amount of my loss.

No. 37.—General Guaranty

Grand Island, April 1, 1901.

Messrs. Williams & Rogers, Chicago, Ill.

Gentlemen—The bearer, Mr. John Bryant, visits your city for the purpose of purchasing a supply of books and stationery. If you will sell him a bill not exceeding one thousand dollars, at ninety days, I will guarantee the payment of same.

Yours truly,

P. D. May.

No. 38.—Guaranty of Payment to be Endorsed on Note

For value received I hereby guarantee the payment of the within note.

J. A. Hampton.

No. 39.—Guaranty of Collection to be Endorsed on Note

For value received I hereby guarantee the collection of this note.

J. A. Hampton.

No. 40.—Guaranty of Note on Separate Paper

For value received I guarantee the payment at maturity of a promissory note dated January 1, 1901, whereby H. A. Cole promises to pay to M. F. Goodyear One Hundred Dollars in six months from date.

J. A. Hampton.

No. 41.—Guaranty with Collateral, Authorizing Sale

Having borrow this day from J. B. Drennan the sum of $1,000 on the following collateral: One note of $300, dated January 1, 1901, signed by Thompson Bros.; five shares of stock in the Chicago Grain Co., the par value of which is $500; one note and mortgage for $600, dated July 1, 1901, and signed by J. H. Williams, *Now witness* that in the event of non-payment at maturity of this note or the interest thereon the said J. B. Drennan or his assigns is hereby authorized to sell the above collaterals at public or private sale, without notice to me, and to apply the proceeds to the payment of said note and all necessary expenses, and I hold myself responsible for any deficiency.

In witness whereof I have hereto set my name on this the 10th day of October, 1901.

J. A. Hampton.

Signature witnessed by
Leonard Umscheid.

No. 42.—Simple Bond Without Condition

Know All Men by These Presents: That I, G. H. Packard, am held and firmly bound unto B. M. Smith in the sum of $1,000 lawful money of the United States, to be paid to the said B. M. Smith or his attorney, executors, or assigns, to which payment

well and truly to be made I bind myself, my heirs, executors, and administrators jointly, severally, and firmly by these presents.

In testimony whereof I have set my hand and seal to this instrument on this the 9th day of October, 1901.

J. A. Hampton.

Executed and delivered in the presence of
Charlie Frack.
Otho Imm.

No. 43.—Bond for a Deed

Know All Men by These Presents: That we, J. A. Hampton as principal and John Thorp and Henry Meyers as sureties, are held and stand firmly bound unto A. H. Andrews in the sum of $2,000, to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, and administrators. The condition of this obligation is such that, whereas the said obligors have agreed to sell and convey unto said obligee a certain parcel of real estate situated in the county of Hall and state of Nebraska and described as follows, namely: Lots Nos. 8 and 10 in Block 24, Railroad Addition to the City of Grand Island, the same to be conveyed by a good and sufficient warranty deed of the said obligor, conveying a good and clear title to the same, free from all incumbrances. And whereas for such deed and conveyance it is agreed that the said obligee shall pay the sum of $2,000, of which $1,000 are to be paid in cash upon the delivery of said deed and the remainder by a promissory note of said obligee bearing interest at eight per cent per annum, payable semiannually and secured by a first mortgage in the usual form upon said premises, such note to be drawn and dated on the day of the delivery of the deed and shall be payable on or before three years from said date.

Now, therefore, if the said obligors shall, upon tender of said obligee of the aforesaid cash, note, and mortgage at any time within sixty days from this date, deliver unto said obligee a good and sufficient deed as aforesaid, then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

In witness whereof we hereunto set our hands and seals this tenth day of March, 1902.

J. A. Hampton, *Principal.*
John Thorp,
Henry Meyers,
Sureties.

Signed in the presence of
W. R. Jones.

No. 44.—Bond for a Deed With Acknowledgment

Know All Men by These Presents: That we, A and B, of the County of Hall and State of Nebraska, are held and firmly bound to C of the County of Cook and state of Illinois in the sum of three thousand dollars, to be paid to said C, his executors, administrators, or assigns, to the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, dated this first day of December, 1901.

The condition of this obligation is that if we, the said A and B, upon payment of $3,000 and interest by said C within three years from this date, agreeable to three notes of even date herewith, shall convey to said C and his heirs forever a certain tract of land situated in the county of Lancaster and state of Nebraska, to-wit, the N. W. quarter of section 15, range 10, township 14, by a warranty deed in common form duly executed and acknowledged and in the meantime shall permit the said C to occupy and improve the said premises for his own use, then this obligation shall be void, otherwise to remain in full force and effect.

In testimony whereof we have each set our hand and seal on the day of the year first above written.

[signed] A.
B.

State of Nebraska, } *ss.*
County of Hall. }

Be it known that on this, the second day of December, 1901, before me, the undersigned notary public in and for said county and state, duly commissioned and qualified, came said A and B, who are known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as the parties thereto, and they acknowledged the same to be their voluntary act and deed for the purpose therein mentioned.

In testimony whereof I hereunto set my hand and affix my of-

ficial seal at my office in the city of Grand Island on the day and year last above written.

EDW. MARKS,
Notary Public.

[SEAL]

My commission expires May 20, 1903.

FORMS OF ASSIGNMENTS

While promissory notes and negotiable papers are usually transferred from one person to another by simple endorsement, it is common with the more formal or solemn documents to use an extended form of assignment. We give below a number of examples for reference which are suitable for most purposes.

No. 45.—ASSIGNMENT SOMETIMES ENDORSED UPON A NOTE

For value received I hereby assign and transfer the within note, together with all my interest and right under the same, to Geo. W. Barker.

J. A. HAMPTON.

No. 46.—ASSIGNMENT OF BOND WITH POWER OF ATTORNEY AND A COVENANT

KNOW ALL MEN BY THESE PRESENTS: That I, J. A. Hampton, of the first part, for and in consideration of the sum of $1,000, lawful money of the United States of America, to me in hand paid by Martin Camp, of the second part, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and assigned, and by these presents do bargain, sell, and assign unto the said party of the second part, his executors, administrators, and assigns, a certain written bond or obligation, bearing date of the 7th day of December, 1898, executed by the Moline Plow Co., of Moline, Ill., and all sum and sums of money to become due thereon. And the said party of the first part does covenant with the said party of the second part that there is now due on said bond or obligation, according to the conditions thereof for principal and in-

terest, the sum of $1,125, and does hereby authorize the said party of the second part in his name to ask, demand, sue for, recover, receive, and enjoy the money due and that may become due thereon as aforesaid.

In witness whereof I have hereunto set my hand and seal this 12th day of January, 1902.

[SIGNED] J. A. HAMPTON.

Signed and delivered in the presence of
B. S. ORR.

No. 47.—ASSIGNMENT OF WAGES WITH POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That I, A B, of the County of Hall and State of Nebraska, in consideration of $47 to me in hand paid by C D, of Grand Island, Nebraska, the receipt whereof is hereby acknowledged, do assign and transfer unto the said C D all claims and demands which I now have and all which at any time between the date hereof and said first day of January next may and shall become due to me for services, and hereafter to have and to hold the same to the said C D, his executors, administrators, and assigns forever.

And I, A B, do hereby constitute and appoint the said C D and his assigns to be my attorneys, irrevocable in the premises, to do and perform all acts, matters, and things, touching the premises in the like manner, to all intents and purposes as I could if personally present.

In witness whereof I have set my hand and seal this third day of October, 1902.

[SIGNED] A B.

Signed, sealed, and delivered in the presence of
E F.

GUARANTY OR SURETYSHIP

REVIEW QUESTIONS

What is a guaranty?

Is the guaranty written on the original contract or on a separate sheet?

Must it be written?

What is the consideration?

What are some of the rights of guarantors?

May a minor be a principal?

Is a guaranty negotiable?

Define continuing guaranty.

Distinguish between guaranty of payment and guaranty of collection.

Distinguish between surety, guaranty, and warranty.

Name some of the rights of surety.

What is the right of contribution?

What is the right of subrogation?

How may the surety be discharged?

If surety settles debt for less than face, can he collect whole amount from principal?

Define a surety bond.

CHAPTER XXIII

AGENCY

389. An agency is based upon the theory that whatever a person may himself legally do he may employ some one else to do for him, and should another person perform an act for him without authority he can make it his own by giving it his approval.

390. **Parties.**—The person who furnishes the employment is called the principal or employer, and the one who is employed is called the agent or the employé (em-ploy-ā′).

Any person capable of making a legal contract may act as principal, and any one of sufficient understanding to transact business intelligently may act as agent. A minor may act as agent and bind his principal even though he be unable to bind himself by a contract.

391. **Classes of Agents.**—Agents are divided with reference to their authority into two classes called (1) general, (2) special. What is known as professional agents are sometimes treated as a separate class, but in reality they belong to special agents.

392. **General Agents.**—A general agent is one empowered to transact all business for his principal of a particular kind or at a particular place. When a gen-

eral agent is employed, he is presumed to be given all the authority necessary for transacting business in the usual way, but in case he goes beyond his actual instructions he will bind the principal so long as he keeps within the usual scope of the business. This will not be true, however, if the person doing business with him knows he is transcending his authority.

A is your general manager in the grain business and buys a large quantity of corn, paying more than the market value, which is in direct opposition to your instructions. You will be held to the contract although A will be responsible to you.

393. **Special Agents.**—A special agent is one who is appointed and authorized to do a specific thing or a few things. Every person dealing with a special agent should first satisfy himself of the agent's authority, for the principal will not be bound beyond the scope of his contract with the agent, but in case the agent goes beyond his authority in the presence of or with the knowledge of the principal, the principal will then be bound by the act unless he objects at once.

394. **Auctioneer.**—An auctioneer is a special agent, and should he be instructed to sell certain goods for not less than $50 he could not bind the principal by selling them for $45. The principal will be bound by

any statement or repesentations made by the auctioneer, and if any fraud or deceit is practiced the buyer may return the goods and demand his money. When the sale is made "without reserve" puffers or by-bidders are not allowed, and their employment will be generally regarded as a species of fraud.

395. **Professional Agents.**—Professional agents are those who hold themselves out to the world as being well qualified to perform certain work which they undertake to do for a compensation. Perhaps the best known professional agents are attorneys. They are of two classes, the attorney at law and the attorney in fact.

396. **Lawyers.**—A lawyer or attorney at law is an officer of the courts who, after pursuing a course of reading or study upon the subject of law, is examined as to his qualifications and admitted to the bar. He is then allowed to act as agent for any one who may choose to employ him in the management of cases before the court.

397. **Relations Confidential.**—Before being admitted to practice a lawyer must, under oath, pledge himself to be true to his clients, and he is under the most solemn obligations not to divulge any secrets his client may make known to him. Even if the client admit to his attorney that he is guilty of a crime, the attorney

will not be allowed under any circumstances to testify to that effect.

398. **Attorney in Fact.**—In the strict sense of the term an attorney in fact is not a professional agent, although he is usually classed as such. An attorney in fact is one who has received special authority to do some particular act, usually signing the principal's name and affixing his seal. Any person with average capacity may be appointed an attorney in fact, and the document giving him authority is called a power of attorney. Among other professional attorneys might be mentioned brokers, factors, auctioneers, masters of ships, etc.

399. **How Appointed.**—An agent must be appointed or in some way authorized by the person for whom he is to act, the general rule being that no one can become the agent of another without the consent of the principal. This consent may be given by spoken words, by written authority, or it may be implied from the relations the parties bear to each other.

400. **Power of Attorney.**—If the business to be done by the agent requires the execution of documents under seal, then the appointment must be made in writing under seal. The appointment must always be of as high a nature as the contract which the agent is authorized to make. An appointment of this kind is

called a *power of attorney.* In states where acknowledgement is necessary to entitle a document to be recorded, the power of attorney should also be acknowledged. A number of forms are given at the close of this chapter.

401. **Contract for the Sale of Real Estate.**—Although a power of attorney is needed before an agent can convey real estate, it is not necessary in order to be able to contract for the sale of same.

Authority for this purpose may be conferred by a simple written statement, a business letter, or in many states by oral agreement with the principal. When the agent makes the contract for the sale of the land, it of course must be in writing. *Example.*—B instructs a broker to sell his farm for $2,000, and next day a customer is found and the broker enters into a written contract to sell him the property. B later finds out he can get more for the place and tries to avoid the contract, but he can not, and must convey the land.

402. **An Implied Agency.**—Whenever a principal knowingly allows any one to act as his agent or holds any one out as being his agent, or where their relations are such as to reasonably warrant the presumption, then the law will assume it to be a fact that the agency

exists, and the principal can not deny it to the detriment or injury of a third party.

For example, you stand by and see Smith sell some of your goods for you. Later you change your mind and do not want to carry out the contract, claiming Smith had no authority to make the sale. The sale would stand, as the authority was implied by your silence.

403. **Notice to Agents.**—Any notice sent to an agent relative to the business of the agency is regarded as notice to the principal himself.

404. **Duties of Agent to Principal.**—Among the most important duties or obligations which the agent owes to his principal may be mentioned the following:

1. Must be loyal.
2. Must obey instructions.
3. Must exercise reasonable skill and diligence.
4. Must give personal attention to the work.
5. Must act in principal's name.
6. Must keep accounts.
7. Must follow usages of trade in the absence of instructions.
8. Must have no adverse interests.

405. **Agent Must be Loyal.**—One of the first duties of an agent to his principal is loyalty. His time, talent,

and energy belong to his principal, and he must not have any interests in the business which are adverse to those of his principal; neither must he take advantage of his principal for the benefit of any other person.

406. **Must Obey Instructions.**—An agent is bound to carefully follow instructions of his principal so long as he is not required to do anything that is immoral or unlawful. In case the principal sustains a loss on account of the failure of the agent to follow instructions, the agent will be held responsible for same. He is not of course expected to do an impossible thing, and he is also excused in case of great emergency from following instructions.

407. **Skill and Diligence.**—When an agent is employed he is expected to exercise ordinary diligence in all his work and also a reasonable degree of skill. The degree of diligence and skill required will depend upon the nature of the work to be done, but whether it be common labor or something requiring great skill he is expected to do his work well.

408. **Personal Attention.**—An agency is a personal trust, and an agent is often employed solely on the strength of his good judgment, skill, and integrity. It therefore follows that the agent must give it his personal attention and can not delegate his author-

ity to a subagent or substitute. This rule does not apply to cases where the nature of the business is such as to absolutely require subagents, neither does it apply to cases not involving personal confidence, but only requiring mechanical duties.

409. **Must Act in Principal's Name.**—The agent must transact all business in the name of the principal, otherwise he will become personally responsible. All contracts or documents of any kind should be signed with the principal's name followed by that of the agent, thus: JNO. HARRIS & CO., by L. E. CURTIS, *Agent.* In case he signs "L. E. CURTIS, *Agent,*" or "L. E. CURTIS, *Agent for Jno. Harris & Co.,*" he may be held personally responsible for the contract.

410. **Must Keep Accounts.**—It is the duty of an agent to keep a correct record of all moneys collected and paid out for his principal and, where the nature of the business requires it, to keep a record of all business transacted. He should also make frequent reports as to all necessary details relative to the business under his charge.

411. **Deposit Money.**—When money to any considerable amount has been collected by the agent, he should deposit same with some bank in the name of the principal. Should he deposit it in his own name he

would be liable to the principal in case the bank should fail.

412. **Usage of Trade.**—In case of an emergency or in the absence of instructions the agent should proceed according to the recognized usages of trade, and at all times he is expected to use as much care and diligence for his principal as he would use were he doing the business for himself.

413. **Agent Must Have no Adverse Interests.**—As stated in a previous paragraph, the agent must have no business in opposition to that of his principal. He can not avail himself personally of any special opportunity for profit in the line of his principal's business. For example, A is purchasing agent for you. He finds a bankrupt stock which is a special bargain and buys it with his own money, selling same at once at $1,000 profit. The profit belongs to you. You are paying him to buy for you, and if he finds any special bargains you are entitled to them. In case he should lose money when doing business in his own name, he would have to bear the loss himself, but in case he makes a profit it belongs to the principal.

414. **No Compensation.**—If an agent contracts to do something which is unlawful or against good morals or public policy, he can not by law collect compensa-

tion for his services, even though he has done his work according to contract.

For example, Mr. B is employed as agent for a lottery company at a certain salary. He can not sue the company and collect his salary in any state where lotteries are forbidden.

415. **Liability of Agent to Third Party.**—When an agent is employed he is supposed to represent his principal in whatever he does in connection with the agency; but it should be remembered that no principal can confer upon him the right to do a thing that is fraudulent or unlawful. There are numerous conditions under which the agent becomes personally responsible, and among them are the following:

1. When he goes beyond his authority.
2. When the principal is not known.
3. When the agent contracts personally.
4. For torts, fraud, or deceit.

416. **When he Exceeds Authority.**—An agent is not supposed to exceed his authority, but should he do so he will become personally liable to the third party. In some cases, as we have seen, he is able to bind his principal even when he goes beyond instructions, but he at the same time binds himself, and this is true though the act be done in perfectly good faith.

417. **When the Principal is Not Known.**—If the

agent at the time of the transaction fails to disclose the name of his principal, the third party is at liberty to regard him as principal and hold him liable. Should the real principal be discovered later, however, the third party may hold him responsible also if he chooses. In a case in New York a committee appointed by a political meeting ordered a public dinner, and it was held that the members of the committee were personally liable for payment of the bill.

418. **When an Agent Contracts Personally.**—It sometimes happens that a customer, being better acquainted with the agent than he is with the principal, prefers to have the agent assume certain responsibility, and in such cases the agent becomes personally liable to him.

419. **Torts.**—A tort has been defined as a civil wrong, an injury arising out of some breach of duty to a person and not a mere violation of a contract. The most common cases are assault, slander, fraud, libel, and trespass. An agent who is guilty of any of these must answer personally for same; an action of this kind is not brought against him as agent, but as an individual.

420. **Misfeasance and Nonfeasance.**—Torts are divided into two classes, (1) misfeasance, meaning a misdeed, a positive wrong, such as assault, trespass,

etc., as named above. For any act of misfeasance the agent is personally liable to the third party; (2) nonfeasance, meaning the omission of some duty or act which should be performed. It is a general rule that agents are not responsible to the third party for acts of nonfeasance although he is liable to his principal.

421. **Liability of Principal to Agent.**—The liability of the principal to the agent are matters of much importance and may be classed as follows:

1. Liability as to compensation.
2. Liability as to reimbursement.
3. Liability as to indemnity.

422. **Compensation.**—The principal is liable to the agent for the prompt payment of compensation according to the contract; it may be a fixed sum per week or month, a commission, or a definite sum for a certain task; but the agent can collect nothing unless the principal has given a promise, either expressed or implied, that he will pay him.

423. **Near Relatives.**—In case of near relatives, such as members of the same family, it is necessary to have an expressed promise to pay for services, otherwise the presumption will be that there was no intention to collect wages.

424. **Implied Promise.**—A promise to pay for ser-

vices rendered need not be in writing, neither is it necessary that it should be spoken; but it may sometimes be implied or understood from the action of the parties. For example, Mr. A works for you with your knowledge and without your objection; the law raises an implied promise on your part to pay him what his services are reasonably worth, even though you did not ask him to begin work.

When the agent is employed at a fixed salary and additional duties are later imposed upon him he can not generally recover any extra compensation.

425. **Reimbursement.**—The principal is liable for all money advanced for expenses by the agent in connection with the agency and must reimburse him for all such sums as have been legitimately expended for the benefit of the business. This rule does not apply to cases where the agent has undertaken to perform a certain task for a definite sum, for then he is expected to pay all expenses.

426. **Indemnity.**—The agent may sometimes, while innocently following the instructions of his principal, trespass upon the rights of another. An agent is directed by his principal to remove certain goods from a building and, supposing them to belong to the principal, he proceeds to his task, but is sued for trespass by a third person to whom the property belongs. The

principal is bound to indemnify the agent for whatever loss the suit has caused him.

427. **Liability of Principal to Third Party.**—The principal is liable to a third party for all promises, representations, wrongful or negligent acts of the agent while acting within the range of his apparent authority. If the agent has wronged a third person while pursuing the work of the agency, either the third person or the principal must suffer, both being innocent parties; but the law says when one of two innocent parties must suffer, it shall be the one who gave the wrongdoer the power to commit the wrongful act.

428. **When the Principal is not Liable.**—It should be remembered that the principal is not liable for the wrongful act of the agent when he goes aside from the scope of his employment, but the agent is then personally responsible.

429. **Independent Contractor.**—When an agent is employed by contract to perform an entire piece of work, the principal generally has no right to interfere or have any control over the work. In such cases the principal is not responsible for the acts of the agent or for the acts of any workmen or subagents the contractor may employ.

430. **Dissolution.**—An agency may be terminated in the following manner:

1. By the act of the principal or agent.
2. By the operation of the law
   - Lapse of time.
   - Completing the object.
   - Death.
   - Insanity.
   - Bankruptcy.
   - Marriage.

431. **By Act of Principal.**—It is a well established rule that the principal has power to dissolve the agency at any time he may desire, unless the agent's authority is in some way coupled with the subject matter.

It matters not that the principal has given the agent a positive contract for a longer time, he still has the authority to terminate the agency at his pleasure. It should be observed, however, that having the *authority* does not necessarily give him the *rights* to do so, and he is liable in an action for damages if he has wronged the agent by suddenly terminating the agency without good cause.

In case the agency is coupled with an interest in the subject matter, the principal can not then annul the contract at will. For example, goods are sent to a factor for sale, and the factor advances to the principal a part of their value in cash. The agent now has an interest in the goods, and the principal can not re-

voke the agency without returning the money advanced.

432. **By Act of Agent.**—The agent has the same privilege of rescinding his contract as has the principal, but he also will be liable for breach of contract.

433. **By Lapse of Time.**—An agency is often created to last for a definite time, such as one year or three months or until the happening of some event, and at the expiration of the time for which the contract was made the agency will terminate.

434. **Completing the Object.**—If an agency is created to do some particular thing, such as to sell a house, the agency would be terminated when the house was sold; or if the house was destroyed before the sale was made that would of course put an end to the agency.

435. **Death of Either Party.**—The death of the principal always terminates the agency unless it is coupled with some interest in the property. The agency being a personal trust, the death of the agent must of course dissolve the contract, as it can not be carried on by legal representative. Death of agent also discharges all subagents.

436. **Insanity.**—In case of insanity of either principal or agent, the agency is at once brought to an end.

This does not apply when the agency is coupled with an interest in the business.

437. **Bankruptcy.**—Bankruptcy of the principal terminates the agency for the reason that the principal then loses all control of his property, and if the principal has no authority to sell or dispose of it, the agent would not of course have that right, except as stated above, where he has an interest in the property, and then he could sell in his own name if he desired. Bankruptcy of the agent will have the effect of terminating the authority of the agent to collect money or assume any position of responsibility; but he may do any formal act, such as signing papers in the name of his principal, etc.

438. **Marriage.**—No person can authorize an agent to do a thing for him which he has not the legal right to do himself; therefore if a man gives an agent the power of attorney to sell his homestead, the same would become void in case of the marriage of the owner before the sale was completed, for then the wife acquires an interest in the property, and the husband could not give a good title to it without her consent.

At common law the marriage of a woman revokes all agencies formerly created by her.

FORMS OF POWER OF ATTORNEY, ETC.

We give below a number of forms of power of attorney from which selection can be made to fit almost any case.

No. 50.—Power of Attorney

Know All Men by These Presents: That I, Geo. E. Boggs, of County of Custer and State of Nebraska, have constituted, ordained, and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put C. W. Kerlin to be my true, sufficient, and lawful attorney, for me and in my name and stead to (here set forth the purposes for which the power is given).

Giving and hereby granting unto him, the said attorney, full power and authority in and about the premises; and to use all due means, course, and process in law, for the full, effectual, and complete execution of the business afore described; and in my name to make and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent before any governor, judges, justices, officers, and ministers of the law whatsoever in any court or courts of judicature, and there on my behalf to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also to submit any matter in dispute, respecting the premises, to arbitration or otherwise; with full power to make and substitute for the purposes aforesaid, one or more attorneys, under him, my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I, Geo. E. Boggs, the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I, Geo. E. Boggs, the said constituent ratifying, allowing, and holding firm and valid all whatsoever my said attorney or his substitutes shall lawfully do or cause to be done in and about the premises, by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal

this second day of May, in the year of our Lord, eighteen hundred and ninety-nine.

GEO. E. BOGGS.

Signed, sealed, and delivered in the presence of us
ROY S. ERRICSSON.
MARK FLETCHER.

No. 51.—POWER OF SUBSTITUTION

KNOW ALL MEN BY THESE PRESENTS: That I, W. E. Morley, by virtue of the power and authority to me given, in and by the letter of attorney of F. E. Lewis, which is hereunto annexed, do make, substitute, and appoint A. V. Wilson as well for me as the true and lawful attorney and substitue of the said constituent named in the said letter of attorney, to do, execute, and perform all and everything requisite and necessary to be done, as fully, to all intents and purposes as the said constituent or I myself could do if personally present; hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

W. E. MORLEY.

Executed and delivered in the presence of
H. E. RISHEL.

THE STATE OF NEBRASKA, } *ss.*
HALL COUNTY. }

On this 12th day of August, A.D. 1899, before me, a notary public duly commissioned and qualified for and residing in said county, personally came W. E. Morley, to me known to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the said instrument to be his voluntary act and deed.

Witness my hand and official seal the day and year last above written.

C. E. HUTCHINSON,
[SEAL] *Notary Public.*

My commission expires January 12, 1903.

No. 52.—POWER OF ATTORNEY IN A SHORTER FORM

KNOW ALL MEN BY THESE PRESENTS: That I, E. H. Sorenson, have made, constituted, and appointed, and by these presents do

make, constitute and appoint C. F. Ziegler my true and lawful attorney for me and in my name, place, and stead to (here describe the thing to be done), giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal this 9th day of September, in the year one thousand eight hundred and ninety-nine.

E. H. Sorensen.

Executed and delivered in the presence of
Herbert Wilson.

No. 53.—Full Power of Attorney to Demand and Recover Debts

Know All Men by These Presents: That I, H. C. Bancroft, have constituted, ordained, and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put, Essie Nordgren to be my true, sufficient, and lawful attorney for me and in my name and stead, and to my use, to ask, demand, levy, require, recover, and receive of and from all and every person or persons whomsoever the same shall or may concern, all sum or sums of money, debts, goods, wares, merchandise, effects, and things, whatsoever and wheresoever they shall and may be found due, owing, payable, belonging, and coming unto me, the constituent, by any ways and means whatsoever.

Giving and hereby granting unto my said attorney full and whole strength, power, and authority in and about the premises; and to take and use all due means, course, and process in the law, for the obtaining and recovering the same; and of recoveries and receipts thereof and in my name to make, seal, and execute due acquittance and discharge; and for the premises to appear, and to represent, before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on my behalf to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also to submit any matter in dis-

pute to arbitration or otherwise with full power to make and substitute one or more attorneys under my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises as fully, amply, effectually, to all intents and purposes as I, the said constituent, if present, ought or might personally; although the matter should require more special authority than is herein comprised, I the said constituent ratifying, allowing, and holding firm and valid all and whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal this 5th day of November, in the year of our Lord one thousand nine hundred.

H. C. Bancroft.

Signed, sealed, and delivered in the presence of
Eva Kirchkoff.

No. 54.—Power of Attorney to Sell and Deliver Chattels

Know All Men by These Presents: That I, the undersigned, for value received, do hereby constitute and appoint V. B. Reeves to be my true and lawful attorney, for me and in my name and behalf to sell, transfer, and deliver unto Edith Blatchford or any other person or persons (here describe the things to be sold).

In Witness Whereof, I have hereunto set my hand and seal this 14th day of December, nineteen hundred.

Witness: W. F. Zumbrunn.
Nellie A. Cedarland.

No. 55.—Power of Attorney to Sell Shares of Stock, with Appointment by Attorney or Substitute

Know All Men by These Presents: That, for value received, I, Thos. C. Leming, of Pottawattamie county, Kan., do hereby make, constitute, and appoint irrevocably, Wesley Payne my true and lawful attorney, with power of substitution, for and in my name and on my behalf to sell, assign, and transfer unto Frank Fisk fifty shares now standing in my name in the capital stock of the Grand Island Gas Co. And my said attorney is fully empowered to take all necessary steps for the said assignment and transfer.

Witness my hand and seal this 7th day of January, 1902.

THOS. C. LEMING.

Signed, sealed, and delivered in the presence of
LEVA BROWN.

For value received I appoint, irrevocably, W. W. Sankey as my substitute, with all the powers above given to me.

Witness my hand and seal, August 2, 1902.

WESLEY PAYNE.

Signed, sealed, and delivered in the presence of
ANNA MCKAY.

No. 56.—POWER OF ATTORNEY TO SUBSCRIBE FOR STOCK

KNOW ALL MEN BY THESE PRESENTS: That I, the undersigned, do hereby irrevocably constitute and appoint Frank Smith to be my true and lawful attorney, for me and in my name and behalf to subscribe for twenty shares in the capital stock of the Second National Bank of Grand Island, Nebraska. And further, one or more persons under him to substitute with like power.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of March, 1902.

Witness present: FRED LEVI.
GERTRUDE HUMPHREY.

No. 57.—PROXY, OR POWER OF ATTORNEY TO VOTE

KNOW ALL MEN BY THESE PRESENTS: That I, O. N. Southwick, of Hartington, Nebraska, do hereby appoint C. N. Cole to be my substitute and proxy for me, and in my name and behalf to vote at any election of directors or other officers, and at any meeting of the stockholders of the First National Bank of Grand Island, Nebraska, as fully as I might or could were I personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of May, 1902.

Witness present: O. N. SOUTHWICK.
ABRAHAM ULRY.

No. 58.—PROXY, REVOKING ALL PREVIOUS PROXIES

KNOW ALL MEN BY THESE PRESENTS: That I, the undersigned, stockholder in the First National Bank, Grand Island, Neb., do hereby appoint W. F. Zumbrunn my true and lawful attorney, with power of substitution, for me and in my name to vote at the meeting of the stockholders in said company to be held at

Grand Island, January 1, 1903, or at any adjournment thereof, with all the powers I should possess if personally present, hereby revoking all previous proxies.

November 1, 1902. B. V. Reeves.

No. 59.—Proxy with Affidavit of Ownership, in Use in Some States

Know All Men by These Presents: That I, Luther Owens, do hereby constitute and appoint J. C. Cherney my attorney and agent for me and in my name, place, and stead, to vote as my proxy at an election of directors of the Chicago Lumber Co., according to the number of votes I should be entitled to vote if then personally present.

In Witness Whereof, I have hereunto set my hand and seal this 3d day of January, one thousand eight hundred and ninety-nine.

Luther Owens.

Signed, sealed, and delivered in the presence of
Carrie Cole.

I do swear (or affirm) that the shares on which my attorney and agent in the above proxy is authorized to vote do not belong and are not hypothecated to the said company, and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to me for the purpose of enabling me to vote thereon at the ensuing election, and that I have not contracted to sell or transfer them upon any condition, agreement, or understanding, in relation to my manner of voting at the said election.

Luther Owens.

Sworn to this 4th day of January, 1899, before me,
J. G. B. Martin,
Notary Public.

No. 60.—Power to Receive Dividend

Know All Men by These Presents: That I, F. E. Young, of Atlanta, Neb., do authorize, constitute, and appoint E. E. Stepp to receive from the Union Pacific Railroad Co. the dividend now due to me on all stock standing to my name on the books of the said company, and receipt for the same; hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

Witness my hand and seal this 9th day of February, 1902.

F. E. YOUNG.

Signed, sealed, and delivered in the presence of

MAMIE DUNN.

No. 61.—POWER OF ATTORNEY TO SELL LAND

KNOW ALL MEN BY THESE PRESENTS: That I, the undersigned, C. I. Brown, of Stamford, Nebraska, have this day made, constituted, and appointed, and by these presents do make, constitute, and appoint C. M. Hadley my true and lawful attorney, for me and in my name to sell and dispose of absolutely in fee simple the following described real estate or any part thereof, situated in the County of Hall and State of Nebraska, to-wit: lots four (4), five (5), and six (6), in block ten (10), Baker's addition to the city of Grand Island, according to the recorded plat thereof, for such price and to such person or persons as he shall think fit, and also for me and in my name and as my act and deed to sign, execute, acknowledge, and deliver such deed or deeds of conveyance for the absolute sale and disposal thereof, with such clauses, covenants, and agreements to be therein contained as the said attorney shall think fit or expedient, hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by said attorney touching or concerning the premises.

In testimony whereof, I have hereunto set my hand and seal, this 6th day of June, 1901.

Witness: C. I. BROWN.

ALBERT DUDEK.

AGENCY

REVIEW QUESTIONS

Define agency.

Who are the parties?

Into what classes is agency divided?

Define each.

Who is a professional agent?

Is a lawyer an agent?

Who is an attorney in fact?

How is an agency created?

What is a power of attorney?

Must an agent be appointed in any special way?

Is an agency ever implied; if so, when?

Is a notice to an agent equivalent to sending it to principal?

What are some of the principal duties of an agent?

What is meant by loyalty?

To what extent must he obey instructions?

In whose name should he deposit money?

When should he follow the usages of trade?

May the agent deal privately in same business of the agency?

To whom do the profits belong if he deals privately?

Who bears the losses of the agent's private deals?

When is the agent not entitled to collect his compensation?

When does the agent become liable to the third party?

If he transcends his authority whom will he bind?

When the principal is unknown, whom will the third party charge?

When the agent contracts personally, whom will he bind?

What is a tort?

What is misfeasance?

What is nonfeasance?

For what is the principal liable to the agent?

In the absence of a contract, are members of the same family supposed to charge each other for work?

What is an implied promise?

To what extent is the principal liable to the agent for reimbursement?

If the agent suffers loss on account of the principal, what indemnity can he collect?

When is the principal liable to the third party for the act of the agent?

When is the principal not liable?

Who is liable for agent's acts under an independent contract?

How may an agency be terminated?

When may a principal revoke an agency? When not?

Is either party liable for damages if he breaks off the contract without cause?

What is meant by terminating by lapse of time?

By completing the object?

How does marriage of either party affect an agency?

CHAPTER XXIV

PARTNERSHIP

439. **Definition.**—A partnership is the relation existing between persons who combine their property, labor, skill, or credit for the purpose of conducting a business for their joint benefit. It is sometimes called a copartnership.

A partnership very closely resembles an agency, inasmuch as each active partner is regarded as a general agent for the firm.

440. **What Constitutes a Partnership.**—There must be a joint ownership of the business itself in order to constitute a partnership. A joint purchase of goods when each party takes a distinct part of same is not a partnership, neither would it be a partnership for one to take the management of the business and receive one-half the profits as pay for his services, for in that case the real owner could discharge the manager at any time and he would then have no interest in the business.

It matters not what each invests, for one may furnish all the money or credit and another only skill or labor, and yet it will be a partnership if it is understood that each is a part owner of the business. If

they divide the profits and mutually bear the losses they are beyond question partners.

441. **How Formed.**—No special kind of contract is necessary to create a partnership, and it may be formed by an oral agreement or by a written document which may or may not have a seal, but the liability and authority of the partners begin at the time of the actual formation of the partnership, even though the agreement be not written until a later date. In case the parties hold themselves out to the world as partners, the law will regard them as such, whether they really are or not.

442. **What the Contract Should Contain.**—The contract between partners is called articles of copartnership (see forms at the end of this chapter) and should always be in writing so as to avoid any possible misunderstanding, although the law does not require it to be written. Great care should be taken to see that the written contract contains all the terms agreed upon. Among other things it should contain the following points:

1. Name of principals.
2. Nature of the business.
3. Duration of partnership.
4. Amount contributed by each partner.
5. Duties of each partner.

6. Rights of each partner.

7. Division of profits and losses.

443. **Other Points.**—The agreement may also contain such other points as the nature of each individual case seems to require. It may provide that the amount each partner is entitled to withdraw from the business shall be limited to a certain specified sum. It may designate a particular method to be used in keeping the accounts. It may provide that neither partner shall sign any obligation as surety without the consent of the other, and that neither party is to sell or transfer his interest to another.

444. **Classes of Partners.**—Partners are divided as to kinds into four separate classes, as follows:

1. General.
2. Dormant.
3. Nominal.
4. Limited.

445. **General Partner.**—A general partner is sometimes known as an ostensible or real partner. He is one whose name appears in the business and who is in fact a partner. He shares the losses of the business and participates in the gains.

446. **Dormant Partner.**—A dormant partner is often called a silent or concealed partner. He endeavors to keep his connection with the business a secret so that

he may share the profits of the business, but not be held liable in case the firm should fail. Should his position become known he is liable the same as a general partner, even if the creditors did not know he was a member of the firm at the time of the transaction. This rule is based on the theory that the dormant partner participates in the gains of the firm which should be used in discharging the firm's debts.

447. **Nominal Partner.**—A nominal partner is one who exists in name only. A partner of this kind puts no money in the business and in fact has no interest whatever in it, but only lends the use of his name and credit as an accommodation to the firm. A nominal partner receives none of the profits of the business, but in case of failure he would be responsible for the debts, as he has held himself out to the world as a real partner. He would not be held liable, however, unless credit was given the firm on account of his responsibility.

448. **Limited or Special Partner.**—A limited partner is one whose liability is limited to the amount of his investment. This kind of a partnership is unknown to common law, but many of the states have provided for same by statutory enactment, which must be strictly complied with.

The provisions under which such a partnership

may be formed in Nebraska, as well as many other states, are as follows:

1. Besides the limited partners there must be one or more *general* partners, who are the only ones authorized to transact the business.

2. The names of the limited partners must not appear in the name of the firm.

3. The investment of the limited partner must be actually paid in.

4. The terms of agreement between the partners must be written and acknowledged. It must also be recorded in the county records and published in two newspapers in the county for six consecutive weeks. Before forming a partnership of this kind the statutes should be consulted.

449. **Who May be Partners.**—Any one who is competent to make an ordinary contract may enter into the contract of partnership.

450. **Partnership Name.**—The partners may select any name they choose for the title of the firm, but in some states they are not allowed to add to the name "& Co." when in fact there are no other members in the firm. For example, if Brown and Smith are partners they would not be allowed to use the firm name of Brown, Smith & Co., although they could use Brown & Co. It is necessary to use the names of the

individuals constituting the partnership in all suits at law.

451. **Duration.**—The length of time for which the partnership is to continue is often stated in the articles of agreement. It may be for life, or for a stated number of years, or for a single transaction, or, if no limit is decided upon, it will continue at the pleasure of the parties and may be terminated by the withdrawal of any one.

In case it is desired to continue the partnership beyond the life of the partners, it must be expressly stated in the agreement, otherwise it will be dissolved by the death of any member of the firm.

452. **Partners are Joint Owners.**—The partnership property is owned jointly by all members of the firm, and each is entitled to the possession of it. While a partner can not point out any portion of the property and say "this is mine," yet he has the power to sell all personal property. Any real estate purchased by partnership funds belongs to the firm and is liable for the firm's debts. The widow of a deceased member of the firm has no dower interest in the firm's real estate until the partnership debts are paid.

453. **Profits and Losses.**—It is usually determined by the partners at the beginning just how and in what proportion the gains and losses of the business shall

be divided, but in the absence of an agreement upon this point, the presumption will be that they intended to divide them equally. The fact that one party has brought more capital into the business than the other, or that one has furnished all the capital and the other only skill or knowledge does not change this rule. Sharing in the gains and losses of a business is regarded as one of the surest tests of the existence of a partnership.

454. **Powers of Each Partner.**—Each partner is regarded as a general agent for the firm, and so long as he confines his operations to matters which properly belong to the business all the other partners will be bound by his acts.

In matters entirely outside of the partnership business he can not bind the firm, and the third person with whom he deals is supposed to take notice of this fact. For example, a firm engaged in the wholesale drug business would not be bound by one of the partners who contracted to buy a car load of horses for the firm; and the seller of the horses should take notice that the partner is going beyond the scope of the firm's regular business, and, while the individual partner may be held to the contract, he can not bind the firm.

455. **When the Firm will be Bound.**—Any fraud or

deceit practiced by individual members of a firm while within the range of the partnership business will be binding on the firm.

As before stated, each member has a right of possession of all the firm's goods or property and may bind the partnership by selling the same or turning it over in settlement of a debt. Each member may give negotiable paper or borrow money for the firm, and even though this is done against the wishes of the other partners, the firm will be bound so long as the third party is not aware of that fact and the transaction is apparently within the range of the firm's general business.

456. **When the Firm Will Not be Bound.**—One partner can not bind the firm in the transfer of real estate, as such transfer can not be made by signing the firm's name to a deed, but requires the individual signature of each partner. Should one partner alone sign it he would convey his interest only.

One partner can not bind the firm by submitting to arbitration any matters arising from the business.

One partner can not bind the firm in any contract when the third party knows the partner is defrauding the firm.

One partner can not bind the others by any contract required to be under seal.

There is some conflict of authority as to whether one partner can make a general assignment of the firm's entire assets for the benefit of creditors, but the better opinion seems to be that he can.

457. **Individual Liability.**—One of the most prominent features in the partnership business is the individual liability of each partner. Among themselves the partners may make any agreement they choose as to the proportion of loss or gain each shall share, and it will be binding so far as they are concerned, but such a contract will have no effect upon the rights of third parties. Each partner is bound to every creditor of the firm for the full payment of the debts, and this is true no matter how small an interest the partner holds, except in case of "limited partner."

The fund belonging to the partnership must first be exhausted and if that is not sufficient then the private property of each individual partner is liable for the payment of the balance due.

On account of this great responsibility, men of wealth usually hesitate in entering into a partnership; in fact, that form of combining capital is fast disappearing, and the corporation is taking its place.

458. **Rights of Creditors.**—The property of the partnership is held for the payment of the partnership debts, and private creditors of the partners have no

claim upon this property until the debts of the firm have been satisfied; but should anything remain after paying the partnership debts the private creditors may then come in and levy upon the same.

To illustrate, A, B, and C are partners. A owes you a large sum on a private debt, and failing to collect it from him personally you try to levy on his interests in the partnership business, but this you can not do until all the partnership debts are paid.

459. **Dissolution.**—A dissolution of a partnership may be effected in any of the following ways:

1. By the expiration of the period for which it was organized.

2. By mutual consent of the parties.

3. By the act of one of the partners.

4. By the death, insanity, or bankruptcy of one of the partners.

5. By the decree of court.

460. **By Expiration.**—If a partnership is organized for a definite time or for a particular transaction it will be at an end when the time expires or the work is accomplished.

461. **By Mutual Consent.**—Like any other agreement, a partnership is formed by the voluntary consent of all the partners, and if they at any time mutu-

ally agree to dissolve the same they have a perfect right to do so.

462. **By the Act of One Partner.**—Any act by one of the partners which severs the unity of interest has the effect of immediately dissolving the partnership. Such act may consist of assigning his interest in the business, engaging in other business which is in competition with the partnership, in refusing to perform his part of the agreement, etc.

In case a partner by any of these acts is guilty of a breach of contract with the other partners, he is liable for any loss resulting from same.

463. **By Death, Insanity, etc.**—A partnership consists of an agreement by which each partner contracts with all the other partners to do certain things. The agreement has as many sides as there are partners, and if by death, insanity, bankruptcy, or any other reason one of the partners is rendered incapable of performing his part of the contract, the partnership at once comes to an end.

464. **By Decree of Court.**—When a satisfactory dissolution can not be agreed upon between the partners, the matter can be taken to a court of equity and a decree of dissolution will be granted. The court will not usually interfere except in cases where it can be shown that one of the partners is guilty of fraud,

gross immorality, lack of good faith, or some other serious charge.

465. **What Powers Cease on Dissolution.**—When a partnership has been dissolved certain powers of the partners cease, and they no longer have the right to use the property of the firm except in such transactions as look toward winding up the affairs of the concern. They can not create new obligations of any kind nor change those which are already in force.

466. **The Powers which Remain.**—While the partners can not create any new obligation after dissolution, they have a right to collect all bills and pay off all obligations and settle up the affairs of the firm.

No partner has a right to turn any of the firm's money to his own use, but it must all be applied to the discharge of the obligations of the partnership. Whatever remains after the debts are paid will be divided according to agreement.

467. **New Powers Created.**—On dissolution the partners assume an entirely new relation to each other. While their old powers as partners are gone, certain new powers are given them to enable them to close up the business. While the partnership continued the partners are one; but now each is a separate individual and they are tenants in common, that is, own-

ers in common, each possessing an individual interest in the property.

When dissolution is caused by death of one of the partners his personal representative becomes a tenant in common with the survivors, but he has no authority in winding up the affairs of the firm, although he may demand an accounting for all funds and property.

468. **Notice.**—On the dissolution of a partnership, notice should be sent to all persons with whom the firm has dealings. The object of this is to protect the partners who are retiring from the business. If no notices were sent, a third party might sell the new firm goods on the strength of the credit of a retiring partner, supposing him to be still in the business, and should the new firm fail to meet the bill the retiring partner would be held for same. It is also customary to publish notice of dissolution in some newspaper of general circulation.

No. 62.—Articles of Copartnership

Articles of copartnership made at Grand Island, Nebraska, this 1st day of August, A.D. 1902, between F. C. L. Hackenberger, Vern Parish, and A. O. Johnson, all of said city, witnesseth:

(1) The parties hereby form a partnership, for a period of ten years from the 1st day of September, 1902, under the firm name of Hackenberger, Parish & Co., in the trade and business of merchants and dealers in dry goods in said city of Grand Island. It may be terminated at any time by any of the partners on ten months' previous notice. The capital is fixed at nine thousand dollars ($9,000), and brought in by the partners in the following proportion: Four thousand dollars ($4,000) each by said F. C. L.

Hackenberger and Vern Parish, and one thousand dollars ($1,000) by said A. O. Johnson, and the same shall be paid in as follows: Two thousand dollars ($2,000) each by said Hackenberger and Parish on said 1st day of September, and two thousand dollars ($2,000) each additional, within sixty days thereafter, and one thousand dollars ($1,000) by said Johnson on the 1st day of January, 1903: and in appropriating profits and losses, interest shall first be allowed to said Hackenberger and Parish respectively, at six per cent, on the sums paid in by them from the date of payment until said 1st day of January, 1903, or such time as said Johnson shall have paid in said sum of one thousand dollars ($1,000).

The profits and losses shall be apportioned among the partners in the proportion to their respective contributions to the capital, and the profits shall be divided on the first Monday of April in each year.

Said Hackenberger and said Parish may draw from the concern for their own use, not to exceed in any quarter, One Hundred Dollars ($100), on which interest at the rate of six per cent per annum shall be charged in dividing the profits. A full inventory and balance sheet shall be made up on the first Monday of April, and on the same day of each year thereafter and a record thereof kept. Said Johnson shall have full charge of said business, and devote his entire time to the same, and shall render an account to his copartners whenever required, and shall be paid a salary of One Hundred Dollars ($100) per month, payable on the last day of each month. The other partners shall not be required to devote any time to said business.

No partner shall make himself personally liable, or sign individually for any one, any instrument as surety, guarantor, or the like, without first obtaining the written consent of the other partners.

Upon the dissolution of the partnership from any cause except death, each partner shall have the privilege of submitting a bid for the entire business and good will, and the one making the highest offer shall succeed to the said business, and after the debts are paid the partners retiring shall receive such part of the balance of the amount bid by the partner succeeding to the business as his interest in the business bears to the entire capital.

In Witness Whereof, We hereunto subscribe our names this 1st day of August, 1902.

F. C. L. Hackenberger.
Vern Parish.
A. O. Johnson.

VARIOUS COVENANTS AND CLAUSES WHICH MAY BE INTRODUCED IN ARTICLES OF COPARTNERSHIP ACCORDING TO CIRCUMSTANCES

No. 63.—Not to Trust Any One Whom the Copartner Shall Forbid

And that neither of the said parties shall sell on credit any goods or merchandise belonging to the said joint trade to any person or persons, after notice in writing from the other of the said parties, that such person or persons are not to be credited or trusted.

No. 64.—Not to Release Any Debt Without Consent, Etc.

And that neither of the said parties shall, without the consent of the other, release or compound any debt or demand, due or coming to them on account of their said partnership, except for so much as shall be actually received and brought into the stock or cash account of the said partnership.

No. 65.—Not to Be Bound or Endorse Bills, Etc., for Any One Without Consent, Etc.

And that neither of the said parties shall, during this copartnership, without the consent of the other, enter into any deed, covenant, bond, or judgment, or become bound as bail or surety, or give any note, or accept or endorse any bill of exchange for himself and partner without the consent of the other first had and obtained, with or for any person whatsoever.

No. 66.—Neither Party to Assign His Interest, Etc.

And it is agreed between the said parties that neither of the said parties shall, without the consent of the other obtained in writing, sell or assign his share or interest in the said joint trade to any person or persons whatsoever.

No. 67.—Principal Clerk to Be Receiver of Moneys, Etc.

That the principal clerk for the time being shall be the general receiver of all the money belonging to the said joint trade, and shall pay out of same all demands ordered by the said parties, and shall from time to time pay the surplus cash to such banker as the said partners shall nominate.

No. 68.—Parties to Draw Quarterly, Etc.

That it shall be lawful for each of them to take out of the cash of the joint stock the sum of two hundred dollars quarterly, to his own use, the same to be charged on account, and neither of them shall take any further sum for his own separate use without the consent of the other in writing; and any such further sum taken with such consent shall draw interest at the rate of ten per cent, and shall be payable, together with the interest due, within ninety days after notice in writing given by the other of the said parties.

No. 69.—Another Form of Articles of Copartnership

Articles of Agreement, Made the 10th day of December, one thousand eight hundred and ninety-nine, between Carl M. Cook, of Coyville, Kansas, and James Brittain, of Bendina, Kansas, as follows: The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under the name or firm of Cook & Brittain, in the general merchandise business and in the buying, selling, and vending all sorts of goods, wares, and merchandise to the said business belonging; their copartnership to commence on the 1st day of January, 1900, and to continue three years, and to that end and purpose the said Carl M. Cook agrees to contribute $3,000 to the capital stock, and the said James Brittain agrees to contribute $2,000 to be used and employed in common between them for the support and management of the said business, to their mutual benefit and advantage. And it is agreed by and between the parties to these presents that at all times during the continuance of their copartnership they and each of them will give their attendance and do their, and each of their, best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ, buy, and sell, with their joint stock, and the increase thereof, in the business aforesaid.

And also that they shall and will at all times during the said copartnership bear, pay, and discharge equally between them all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit, and increase that shall come, grow, or arise from or by means of their said business shall be divided between them in proportion to the investment; and all loss that shall happen to their said joint business, by ill commodities, bad debts, or otherwise shall be borne and paid between them in the like proportion.

And it is agreed by and between the said parties that there shall be had and kept at all times during the continuance of their copartnership perfect, just, and true books of accounts, wherein each of the said copartners shall enter in and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise by them or either of them bought or sold by reason or on account of the said business, and all other matters and things whatsoever to the said business and the management thereof in anywise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto without any interruption or hindrance of the other. And also the said copartners once in six months, or oftener if necessary, shall make, yield, and render each to the other, a true, just, and perfect inventory and account of all profits and increase by them, or either of them, made, and of all losses by them, or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in this said copartnership and business, and the same account so made shall and will clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits so made as aforesaid.

And the said parties hereby mutually covenant and agree to and with each other, that, during the continuance of the said copartnership, neither of them shall nor will endorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end or other sooner termination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all the stock and stocks, as well as the gains and increase thereof, which shall

appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, in the proportions aforesaid.

CARL M. COOK.
JAMES BRITTAIN.

Witness:
W. C. PORATH.

No. 70.—CERTIFICATE OF A LIMITED PARTNERSHIP

THIS IS TO CERTIFY, That the undersigned have, pursuant to the provisions of the statutes of the State of Nebraska, formed a limited partnership, under the name or firm of Scheie & Noren; that the general nature of the business to be transacted is (describe the business), and that John Scheie is the general partner and G. L. Noren is the special partner, and that the said G. L. Noren has contributed the sum of five thousand dollars ($5,000) as capital towards the common stock, and that the said partnership is to commence on the 1st day of January, 1903, and is to terminate on the 1st day of January, 1907.

Dated this 23d day of December, one thousand nine hundred two.

JOHN SCHEIE.
G. L. NOREN.

Witness:
KATIE BRETY.

STATE OF NEBRASKA, } ss.
COUNTY OF HALL. }

On the 24th day of December, one thousand nine hundred and two, before me came John Scheie and G. L. Noren, known by me to be the individuals described in and who executed the above certificate, and they severally acknowledged that they executed the same.

D. D. KELLOGG,
Notary Public.

[SEAL]

My commission expires February 21, 1906.

STATE OF NEBRASKA, } ss.
COUNTY OF HALL. }

John Scheie, the general partner named in the above certificate, being duly sworn, doth depose and say that the sum specified in the said certificate to have been contributed by the spe-

cial partner to the common stock has been actually and in good faith paid in cash.

Sworn this 25th day of December, 1902, before me,

C. H. MENCK,
County Clerk.

PARTNERSHIP

REVIEW QUESTIONS

Define partnership.

In what way does it resemble an agency?

What may be invested?

How may it be formed?

What is the partnership contract called?

What should it contain?

Name the different classes of partners.

Define a general partner and state his liability.

What is a dormant partner and what is his liability?

Describe a nominal partner and state his liability.

Who is a limited partner and what is his liability?

How is a limited partnership formed?

Who may be partners?

Are there any restrictions on the firm name?

For how long may a partnership continue?

Who holds the title to the partners' property?

How are the losses and gains divided?

What power has each partner to bind the firm?

When will the firm not be bound?

To what extent are individual partners bound by the debts of the firm?

Is the partnership property liable for the payment of private debts of the partners?

How may a partnership be dissolved?

What powers of partners cease at dissolution?

What powers remain?

What new powers are created?

Is it necessary to send notice of dissolution?

For what reason is notice sent?

CHAPTER XXV

CORPORATIONS

469. **Definition.**—A corporation is an artificial person created under the authority of law. It consists of a number of natural persons associated together and acting under a particular name as one individual. The corporation is regarded as having an existence separate and distinct from the stockholders or incorporators; for while the incorporators may own the stock in the corporation, the corporation itself owns the property held in its name. Within recent years corporations have been found to be the most popular form, and in fact the almost universal means of uniting great fortunes in any enterprise.

470. **Differ From Partnerships.**—There is a great difference between a corporation and a partnership. In a partnership each partner is a general agent for the firm; each assumes a liability for all debts of the concern; no authority from the state is required, nor is any charter needed to form the same; and the death, withdrawal, or insanity of any member of the firm dissolves the partnership.

In case of a corporation it is necessary to have the authority of the state in the form of a charter before

the organization can be completed. The stockholders select one or more persons who have exclusive control of the business, and the stockholders themselves have nothing to do with the management of the concern. Should one or more of the stockholders die, become insane, or sell out his interest, the corporation would not be affected, and in case the corporation fails, the stockholder's liability is usually limited to an amount equal to the par value of his stock.

471. **Kinds of Corporations.**—Corporations may be divided into three classes, and further subdivided, as follows:

1. Sole
2. Quasi
3. Aggregate
   - 1. Religious
   - 2. Lay
     - 1. Eleemosynary
     - 2. Civil
       - 1. Public
       - 2. Private

472. **Corporation Sole.**—As the name indicates, a corporation of this class consists of a single individual and his successors. Corporations of this kind are rarely known in the United States, as they are adapted only to cases where all the functions of an institution are combined in one person, as for example the king or queen or absolute ruler of a country. In such cases all real estate possessed by the ruler belonging to the office would pass to his successor; but the same right would not extend to personal property. In truth, but

few points in corporation law are applicable to sole corporations.

By special act of the legislature in Illinois, bishops in certain religious organizations were made corporations sole, for the purpose of holding title to real estate belonging to the church.

473. **Quasi-Corporations.** — A quasi-corporation (quā′-si) is one which does not possess a charter, but which is allowed to exercise the functions of a corporation to a limited extent, usually for the purpose of holding and transmitting public property. Among the bodies most frequently regarded as belonging to this class may be mentioned county commissioners and officers of school districts.

474. **Aggregate Corporations.**—This class of corporations constitutes the only kind in which the student of Commercial Law is particularly interested, and the definition given at the opening of this chapter applies especially to aggregate corporations.

As its name implies, it consists of a number of natural persons associated together and acting under a particular name as one individual. Aggregate corporations are divisible into two classes:

1. Religious or Ecclesiastical Corporations.
2. Lay Corporations.

475. **Religious Corporations.**—These are formed for

the advancement of religious work, and consist principally of church societies. The statutes of most states provide for the organization and regulation of these corporations. They do not usually issue stock, and any property they may acquire is generally held by a board of trustees or directors.

476. **Lay Corporations.**—This has reference to corporations not distinctly religious or ecclesiastical in character. Lay corporations are divided into two classes, as follows:

1. Eleemosynary Corporations.
2. Civil Corporations.

477. **Eleemosynary Corporations.**—An eleemosynary (el-e-mos′-i-nā-ri) corporation is one organized for the distribution of alms, or the carrying out of any work of charity according to the instructions of the donors. Among the most common forms of this class may be mentioned:

Hospitals for the poor.

Colleges and academies supported by donations.

Homes for the friendless, etc.

478. **Civil Corporations.**—Civil corporations are formed for the temporal benefit of their members. Examples of same are banks, manufacturing companies, cities, towns, etc., and they are divided into two classes:

1. Public Corporations.
2. Private Corporations.

479. **Public Corporations.**—These are corporations created by the government for the welfare of its citizens. To this class belong counties, cities, towns, school districts, etc. They are invested with certain legislative powers for local purposes; but such powers are subject to the control of the legislature of the state.

480. **Private Corporations.**—Any corporation founded by private enterprise is regarded as a private corporation, without regard to its object. Most corporations of this class are organized for the purpose of pecuniary benefit, such as railroads, telephone companies, banks, etc., but a hospital for the poor, or a home for the friendless, would also be a private corporation if founded by a private benefactor.

481. **Quasi-public Corporations.**—Railroads, telegraph, and canal companies are sometimes called quasi-public; that is, they have something of the nature of a public corporation, yet they are, in fact, only private corporations, notwithstanding they have delegated to them from the state the right of eminent domain and owe certain peculiar duties to the public at large.

482. **How Corporations are Formed.**—To create a

corporation requires the act of a sovereign power, and in this country they are formed by the legislature of the state or United States. They may be created in three ways:

1. By prescription.
2. By special act of charter.
3. By general law.

483. **By Prescription.**—A corporation created by prescription is one that has been in existence so long that the courts presume a grant of power was given it, although by the accidents of time the document has been lost. It has been held that by exercising the functions of a corporation for thirty years a corporation is given a right by prescription.

484. **By Special Act or Charter.**—In this country a special charter can be obtained only from the legislature, and a regular bill must be drafted embodying the special privileges, rights, and powers desired for the proposed corporation. When this bill is passed and becomes a law, it will be regarded in the light of a contract between the state and the corporation so organized.

Many states are now prohibited by law from creating corporations in this way, for the reason that designing persons, by the use of undue influence and the expenditure of large sums of money, are sometimes

able to secure from the legislature valuable concessions for their corporations to the detriment of the public in general.

485. **By General Law.**—Nearly all the states now have what is called a general incorporation act, and by complying with the terms of same, corporations may be organized at any time without waiting for a meeting of the legislature. The object of this general act is to facilitate the organization of corporations and to secure for them uniformity and equality of rights, as well as to prevent the legislature from granting special franchises to certain corporations to the detriment of the public.

National banks are organized under a general law passed by Congress, and a discussion at some length will be found relative to this matter under the chapter on Banks and Banking.

486. **Formation of Corporations.**—In forming a corporation under the general incorporation act, the advice of a reliable and competent lawyer should be obtained and strict adherence should be given to the local state law. The following outline of suggestions will indicate the general plan. The persons associating themselves together sign and acknowledge before a notary public, or other competent official, articles of association setting forth in a brief but specific manner

such facts pertaining to the proposed corporation as are required by law.

These facts usually embrace the following items:

1. Name of corporation.
2. Object for which same is formed.
3. Place where the business is to be done.
4. Length of time it is to exist.
5. Amount of capital stock, if any.
6. Amount subscribed and names of subscribers.
7. The number of shares into which stock is to be divided.
8. The per cent of capital stock to be paid in.

487. **Corporate Record.**—The articles of association of any corporation are usually recorded with the county clerk in the county where such a corporation is organized, and a duplicate copy of same is filed with the secretary of state. These articles, when properly recorded, become the evidence of the existence of the corporation named therein. Great care should be taken to see that a complete record is kept of the first meetings of the corporation, and that all requirements of the law incident to the organization are carefully complied with and noted.

488. **Charter.**—The charter of a corporation organized under the general law consists simply of the articles of association, together with the general law

itself, which defines the powers, duties, etc., of such corporations.

489. **Not Liable for Acts of Promoters.**—No corporation can be held responsible for the acts, contracts, or promises of its promoters, provided such contracts or promises were made prior to its organization. A corporation can not become a party to any contract or agreement before it is itself in existence, and even then it can only be bound by its duly authorized officers. Therefore, any one doing business with the promoters of a corporation should look to such organizers, personally, for the fulfilment of their promises.

490. **Corporators.**—A corporator is one who signs the articles of association. The number of corporators is designated in the general law under which the company is organized, and usually consists of from three to seven persons, although there may be any number of stockholders. Being the organizers the corporators generally decide many of the details, such as a name, amount of capital stock, place of business, etc.

491. **Capital Stock.**—The capital stock of a corporation is fixed by the articles of association or charter, which amount is subscribed and is to be paid in by the shareholders. The capital stock, therefore, constitutes the sole resource of the corporation on com-

mencing business, and, should gains or losses follow, they will not increase or diminish the capital stock, as it is a fixed quantity, and can only be changed by amending the charter. Profits or losses may cause the value of the capital stock to fluctuate, so that it may be worth at one time much more than its face value, and again be worth much less. But this will not change the fixed amount, which represents the capital stock.

492. **Subscribers.**—A subscriber is one who signs the subscription book, agreeing to take a certain number of shares in the corporation being organized. This subscription is, of course, a binding contract in case the full capital stock is subscribed. It has been held in some states that an oral contract for shares can not be enforced, but many courts hold to the contrary. After the organization is complete, and the shares have been issued, the subscriber is then called a shareholder or stockholder.

493. **Payment for Shares.**—Each subscriber is supposed to pay the amount of his subscription in cash, but if not contrary to the charter it may be paid in any kind of property the company has a right to purchase. For example, the payment for stock in an irrigation company might be made in lumber, machinery, labor, etc., if satisfactory to all parties.

494. **Watered Stock.**—When stock is issued without the payment of money or value of any kind, it is said to be watered stock. This apparently increases the capital stock, but in reality adds nothing to the resources of the company. It makes an obligation on which the corporation is expected to pay dividends, but contributes nothing whatever towards increasing the earning power of such corporation.

No. 71.—Form of Stock Certificate

495. **Issue of Shares.**—A stockholder who has fully paid up his subscription is entitled to a stock certificate, which specifies the number of shares of the capital stock he owns. Stock of this kind is regarded as

personal property, even though the corporation itself owns nothing but real estate.

496. **Sale of Shares.**—The owner of stock in any corporation may sell or dispose of his shares with perfect freedom, and as soon as the sale is completed the seller loses all his rights as a stockholder. He no longer has a voice in the management of the company, and can not participate in the profits. He is also relieved of any further responsibility, and in case of failure of the company he would not be liable for any further assessments.

The purchaser of the stock succeeds to all the seller's rights and is entitled to vote. He is also liable for assessments, and will receive dividends if any are paid.

497. **How to Assign Stock.**—When stock certificates are sold, the following form of assignment may be used:

> For value received I hereby sell, assign, and transfer unto Oscar Berroth all the shares of stock within mentioned, and appoint Geo. Bagley as my true and lawful attorney to make the necessary transfer on the books of the company.
>
> Witness my hand this 15th day of November, 1902.
>
> FRED KING.

This assignment should be written on the back of the certificate, and a blank space may be left for the names of the purchaser and attorney. The same certificate may then be sold again by merely delivering it

to the purchaser, and this process may be repeated until some one buys the stock who wishes to have the same registered. This he may do by simply filling in his own name as purchaser and any name he may choose as his attorney.

498. **Register Transfers.**—Most corporations keep an accurate record of all their shareholders, and require each purchaser of stock to have the same recorded on the books of the corporation before he is allowed to exercise any of the rights of a shareholder. As between the buyer and the seller of the stock, the transfer of title is complete without having the same recorded.

499. **Cancel Old and Issue New Certificates.**—When the purchaser of stock presents his certificate for record, the corporation at once takes up and cancels the same, and issues to him a new certificate in his own name. In all cases the corporation has a right to demand the surrender of the old certificate before issuing a new one.

500. **Importance of Recording.**—Most corporations do not recognize a transfer of stock until it has been recorded on their own books, and when dividends are declared they are paid to the individual in whose name the stock is recorded, even though the certificate may have been assigned by him before the divi-

dend was declared. In case the shares are not registered, the assignor, and not the assignee, is liable for assessment. Assessments paid under such conditions, however, could be recovered from the assignee.

501. **Unpaid Stock Subscriptons.**—Those who subscribe to the capital stock of a corporation are legally bound to pay the amount of their subscription when it is called for. But when the corporation is threatened with insolvency, the shareholders sometimes try to avoid their responsibility and evade further payment. This is usually attempted in one of two ways.

1. By cancellation of the subscription with the consent of the corporation.

2. By the transfer of shares.

If fraudulent intent can be shown, a court of equity will set aside such transactions.

Shares may be assigned before they are fully paid up, if done in good faith, and the assignee will become liable for the unpaid balance. But when such a sale is made just prior to the failure of the corporation, and made to a person known to be insolvent and irresponsible, the transaction bears strong indication of fraud.

502. **Dividends.**—A dividend is the net profit of the corporation, which has been set aside to be paid to the stockholders. If the business is profitable, dividends

are usually paid on the stock every six months; but some corporations pay them every three months; and there are others which, like some individuals, make no profits, and therefore pay no dividends.

503. **Discretionary With the Directors.**—The directors of a corporation usually have the power to determine when a dividend shall be declared. Sometimes they decide to pay all the profits out to the shareholders in dividends, and again, it is thought best to accumulate a reserve fund for some special purpose, or to have in readiness in case of emergency. This matter is, as a rule, left entirely with the directors, and the courts will not generally compel the payment of a dividend so long as the directors are acting in good faith.

504. **Preferred and Common Stock.**—There are two classes of stock, the first being known as preferred stock, the second as common stock. Preferred stock, as the name indicates, is given the preference, and a certain per cent of dividend will be paid on it before anything is paid on the common stock. Preferred stock is not generally issued unless the corporation reaches such a condition of financial embarrassment that it must have capital or suspend business. Rather than see the company fail, and lose everything, the original stockholders are willing that preferred stock

shall be issued to any one who will invest the needed capital.

505. **Powers of a Corporation.**—Every corporation has certain powers which are clearly defined, and among them may be enumerated the following:

1. To have perpetual succession.
2. To sue and be sued.
3. To purchase and convey lands and chattels.
4. To hold lands as trustees.
5. To have a common seal.
6. To make by-laws.
7. To elect officers.

506. **Perpetual Succession.**—As before stated, a corporation is regarded as having an existence separate and apart from the stockholders, and in case any or all of them die, their personal representatives succeed to all their rights, and the corporation itself is not changed. Therefore a corporation is said to have perpetual succession. But of course this could not be literally true, as there is a limit to everything except infinity; besides, many corporations are chartered for a limited number of years, and are, therefore, dissolved at the expiration of the time named.

507. **To Sue and be Sued.**—A corporation may sue and be sued in its own name, just the same as a natural person, and it is now well settled that they are

responsible, and may be sued for torts, trespasses, conspiracies, etc., committed by their agents or officers.

508. **To Purchase and Convey Lands and Chattels.**—A corporation has the power to purchase and hold any property, either personal or real, which is needed in carrying out its lawful object as set forth in its charter. But it is prohibited from acquiring property for objects which are foreign to its legitimate business. In case a corporation does acquire lands in excess of its legal authority, and thereby violates its charter contract, the state alone can interfere and declare a forfeiture in its own favor.

509. **To Hold Lands as Trustees.**—It was formerly supposed that a corporation could not hold land in trust for another, but now every large city has its trust companies, whose exclusive business is to act as trustees, guardians, executors, administrators, etc., and they are usually able to offer better service at a more reasonable fee than can be furnished by individuals.

510. **To Have a Common Seal.**—Corporations are required to use a common seal on all the more solemn forms of contracts, such as conveyances of real estate, etc., but on the simple contracts, such as checks, notes, drafts, etc., a seal is not required.

511. **To Make By-laws.**—The by-laws of a corporation has reference to the rules which govern the internal management of the company. These rules may be made by the stockholders or the power of formulating the same may be given to the board of trustees, but in either case the by-laws must not conflict with the charter or the laws of the land.

512. **To Elect Officers.**—All the business of a corporation is done through its officers, and not through its stockholders. Therefore the right to choose its officers is one of the necessary conditions of the company's existence. This is usually done at the annual meeting of the stockholders.

513. **Stockholders' Rights.**—The stockholders, being the owners of the corporation, of course have a right to dictate how the business is to be conducted, so long as their ideas conform to their charter or articles of association; but the details of the management are always placed in the hands of a board of directors. At a meeting of the stockholders, held for the election of this board and the transaction of any other business, each person has one vote for each share of stock he owns. Therefore, if any person owns one share more than half the stock, he can control the election.

Aside from having a voice and a vote at the annual meeting, the shareholder has nothing whatever to do

with the management of the business, this being entirely in the hands of the board of directors. If a stockholder can not be present at these meetings personally, he may delegate his right to vote to some other person, who will act as his proxy.

514. **Cumulative Voting.**—A number of states provide for what is known as cumulative voting. This permits a shareholder to cast a number of votes for one director, equal to the number of his shares multiplied by the number of directors to be voted for. If you own ten shares, and eight directors are to be elected, you may give ten votes for each of the eight, or you may give the entire eighty votes to one candidate. The object of this law is to make it possible for the small shareholders to unite and elect one or more members of the board. Under the regular method, parties holding a majority of the stock can unite and elect every member of the board.

515. **Name of Corporation.**—Very little restriction is placed on the selection of a corporate name, but after the name is adopted, it can not be changed except by consent of the state. The laws of some states require that the name selected shall begin with "The," and end with "Company." *Example.*—"The J. P. Garrison Company." If the corporation was known as "J. P. Garrison," the public could not tell when the

name meant J. P. Garrison individually, and when it meant the corporation.

516. **Must Not Exceed its Authority.**—When the state charters a corporation or allows it to organize under the general law, it is with the provision that such corporation is created for a distinct and clearly defined purpose. No corporation, therefore, has a right to make any contract or to do any act which is not authorized either expressly or by implication in its charter. Any stockholder may bring suit to restrain the officers of a corporation from engaging in transactions which are clearly beyond its chartered powers; or the state may bring an action to revoke its charter altogether.

517. **Ultra Vires.**—Any act or contract of a corporation which oversteps the bounds of its chartered rights, is said to be *ultra vires* (ul-trā vī′-rēz), that is, beyond the lawful scope or power of the corporation to perform under any circumstances. To illustrate: a banking corporation would have no right to enter into the life insurance business, and should it do so, the transaction would be *ultra vires*. The fact that the board of directors authorized the cashier to issue policies would be of no effect, for any additional authority can come only from the state.

All persons having dealings with the corporation

are bound to take notice of its powers, for its charter or articles of incorporation are matters of public record or law, and therefore open to the inspection of everybody.

518. **Foreign Corporations.**—A corporation, being an artificial person, is created for a special work and endowed with only such powers and rights as are necessary to accomplish its purpose. A corporation is, therefore, not a citizen in its fullest sense, and no state in creating a corporation can confer upon it the right to act within the jurisdiction of any other state. Therefore, if a corporation wishes to maintain an office and do business outside of its own state, it must conform to the laws of each state in which it wishes to operate. Most all the states have adopted certain laws regulating the acts of foreign corporations. They are generally required to file with the secretary of state a copy of their articles of incorporation, make certain sworn statements as to their business condition, and pay a specified sum into the state treasury as a license for the privilege of doing business in the state.

519. **Corporate Trusts and Combines.**—A trust, as it is usually understood, means a combination among corporations engaged in a similar business, so as to bring various concerns under one management and

thereby control the output, the price of raw material, and the price of the finished product. Such combinations have been repeatedly declared illegal upon the grounds of public policy, as being in restraint of trade and also as being *ultra vires.*

520. **Executing Corporate Contracts.**—The contracts of a corporation should be drawn in such a manner that the name of the corporation will appear in the body of the contract, and not the name of the officer who is to sign the same. In filling up an ordinary blank note to be given by The St. Louis Commission Company it should not read "I promise to pay," or "We promise to pay," but "The St. Louis Commission Company promises to pay." The signature to a document should always consist of the name of the corporation, followed with the word "by," and the signature of the officer or the agent. *Example.*—"The St. Louis Commission Company, By D. A. Trivelpiece, Secretary."

521. **Liability of Stockholders.**—The liability of a stockholder in a corporation is determined wholly by the statutory provisions under which the corporation is formed. In most states the stockholders are liable only for the amount of stock owned by them. To illustrate: if Mr. A owns $1,000 stock in a corporation, which amount has been fully paid in, he can not be re-

quired to pay anything more in case the company fails in business, although he may lose the $1,000 he has already invested. If, however, he has subscribed $1,000 and paid in only $500 of same, he would, in case of the failure of the company, be liable for the payment of the other $500 if needed to meet the indebtedness. It is this feature of immunity from personal liability which makes corporations an attractive form of investment.

This exemption from liability is usually conditioned upon the performance of certain acts, required by the statutes, such as the publication annually of correct reports of the financial condition of the concern. A failure to comply strictly with the law in this regard may subject each stockholder to liability for all the debts of the concern. In many states stockholders are held liable for twice the amount of their stock, and this is especially true of banking corporations.

522. **Capital Stock a Trust Fund.**—The doctrine is sometimes advanced that the capital stock of a corporation is a trust fund for the payment of the company's debts. It is the company's sole resource on commencing business, and it is held out to the public as an evidence of the ability of the concern to meet its obligations. It is, in fact, the basis on which it builds its

credit and works itself into the confidence of the public.

Creditors therefore have a right to demand that the full amount of the capital subscribed shall be paid in, provided it is necessary to meet the obligations, and also that the capital remain unimpaired, except from the natural losses incident to the legitimate prosecution of the business. Should any officer or stockholder, therefore, participate in the illegal diversion, withdrawal, or fraudulent use of the capital stock, such wrong-doers are liable to any creditors who have been injured thereby.

523. **Dissolution.**—A corporation is dissolved whenever for any reason it surrenders or loses its charter. Should the officers or stockholders continue to act after the dissolution, they can bind only themselves in an obligation or contract, and in most cases would be regarded in law as partners.

The dissolution of a corporation may take place in any of the following ways:

1. By expiration of charter.

2. By the surrender of its charter with the consent of the state.

3. By the forfeiture of its franchise.

JOINT STOCK COMPANIES

524. **Explanation.**—Joint stock companies should not be confused with corporations, for there is a great difference between them. In fact, a joint stock company is more like a partnership, but it really occupies a middle ground between a corporation and a partnership. They are a very popular form of organization in England, and for many years were regarded favorably in this country, but since all the states now have general laws under which corporations may be formed with such ease, and at a very slight expense, the joint stock company is seldom met with except in some of the eastern states.

525. **How Organized.**—The organization of a joint stock company is effected in practically the same manner as a partnership is formed, with the exception that certain members of the company are selected as officers and have charge of the details of management, the same as officers of a corporation. Those who enter into the company draw up and sign articles of agreement, which become the charter and by-laws of the concern. In it are specified the powers, duties, etc., of the members, and their liability is regulated by the statutes of the state.

526. **Articles of Association.**—The articles of association contain all the details regarding the manage-

ment of the company, and among others the following points are taken up:

1. Name of company.
2. Nature and place of business.
3. Amount of capital stock.
4. Number and par value of shares.
5. Officers and duties of same, etc.
6. Time of commencing business.
7. Manner of forming the company, etc.

527. **Liability of Stockholders.**—In most states, the stockholders are held to the same responsibility as though they were partners, but in some states they are allowed to limit their liability the same as in a limited partnership. (See chapter on Partnership.) But in that case the word "limited" must always appear as a part of the company's name.

528. **Comparison with Partnerships and Corporations.** It will be seen that a joint stock company is very much the same as a partnership in the liability of its members, but in the organization, manner of doing business, having the powers of succession, election of officers, etc., it resembles the corporation very closely.

CORPORATIONS

REVIEW QUESTIONS

Define corporation.

How does a corporation differ from a partnership?

Define a corporation sole and give example.

Define aggregate corporation and give example.

Define a quasi-corporation and give example.

Define religious corporation and give example.

Define a lay corporation and give example.

Define eleemosynary corporation and give example.

Define civil corporation and give example.

Define public corporation and give example.

Define private corporation and give example.

Define quasi-public corporation and give example.

How are corporations formed?

What is a charter?

What is the capital stock?

What is the watered stock?

What is a certificate of stock?

Can stock certificates be sold?

Is it necessary to have a transfer of stock registered?

What are dividends?

Define preferred stock.

Define common stock.

Who elects the directors in a corporation?

Who elects the officers?

What is meant by *ultra vires*?

Define a foreign corporation.

What is the liability of a stockholder?

How may a corporation be dissolved?

What is a joint stock company?

How is it organized?

How does it differ from corporation and partnership?

CHAPTER XXVI

BAILMENT

529. **Explanatory.**—The contract of bailment arises when one individual delivers to another any personal property without transferring the ownership; such a delivery always presumes an agreement, either expressed or implied, that the thing delivered is to be accounted for or returned; as for example the loan of a book, the hire of a horse and carriage, the renting of a typewriter, etc.

530. **Parties.**—The word "bail" in law means "to deliver," therefore the one who delivers the thing to another without conveying ownership is called the "bailor" and the party who receives the thing is called the "bailee." The delivery itself is a "bailment."

Bailment includes all of the ordinary contracts growing out of hiring, keeping, lending, carrying, and working upon the goods of another, whether with or without reward, and all delivering of them in pledge or pawn as security for a debt.

531. **Test of Bailment.**—It should be remembered that to constitute a bailment, the property must be delivered with the agreement either expressed or implied that the identical thing deliverd is to be re-

turned. In short, it is next to impossible for one to have the personal property of another in his possession without becoming a bailee.

If this be not the case, it will usually be termed a sale or a gift. It matters not that the goods are to be returned in an entirely different form, such as the delivery of cloth to a tailor to be made into a suit, or the delivery of gold to a goldsmith to be made into a watch case; it would still come under contract of bailment.

If, however, the conditions of the delivery are such that the identical property is not to be returned, but another thing of like kind and quality, then the transaction, instead of a bailment, becomes a purchase to be repaid in kind.

532. **Exception.**—To the above rule there is one apparent exception in most states, and that is in the case of grain delivered to an elevator or warehouse. The grain of the various depositors, when it is of the same grade, is usually mixed together in one bin, so that the identical property can not be returned to each depositor, but each becomes a part owner of the whole according to the amount he has put in.

533. **Kinds of Bailment.**—Bailment is, as a rule, divided into the following classes:

1. Deposit.
2. Mandate.
3. Gratuitous loan.
4. Pledge or pawn.
5. Bailment of hire.

534. **Degree of Care.**—Every bailee on receiving goods of another into his possession becomes responsible for a certain degree of care, and it is a very important matter for him to know just what degree of diligence the law will expect him to exercise, that he may be held harmless in case of loss or destruction of the property. Courts have recognized and defined three degrees of care, viz.:

1. Slight care, or that degree of diligence which a man, though somewhat careless, would exercise in his own affairs.

2. Ordinary care, or that degree of diligence which every prudent man would use in his own business.

3. Great care, or such care as a very exact and thoughtful man would use in dealing with his own property.

It will be seen that the degree of diligence required by the law measures inversely the degree of negligence for which the bailee will be held accountable. Thus, the absence of slight care will be regarded as gross negligence, the absence of ordinary care will be re-

garded as ordinary negligence, the absence of great care will be considered as slight negligence.

535. **General Rule of Care.**—In cases where the contract of bailment is entered into solely for the benefit of the bailee, he must take great care and will be liable for even slight negligence. For example, I loan you my watch, which is solely for your benefit. But where the contract is solely in the interest of the bailor, only slight care need be taken, and the bailee will not be considered responsible except for gross negligence. *Example.*—Mr. A stores his household goods in your barn for safe-keeping, the transaction being of course solely for his benefit. If both bailee and bailor are to be benefited, ordinary care will be required and ordinary negligence will make bailee liable.

DEPOSIT

536. **Definition.**—A deposit consists of the delivery of goods or chattels to another to be kept without reward and returned or accounted for according to the agreement.

A distinction should be noted between a deposit as here described and the ordinary deposit of money in a bank. Money deposited in a bank subject to check is simply a case of debit and credit, usually called a general deposit, as there is no intention of having the identical money returned.

In case of a deposit as here described, the same article deposited must be returned, and the keeping or storing of same must be done without reward.

If money is left in a bank for safe-keeping with the distinct understanding that the identical money is to be returned, it is then a deposit—usually called a special deposit.

537. **Liability.**—The keeping of the thing deposited must be done wholly without recompense, otherwise it would come under another class of bailment. If nothing is paid for the keeping of the article it is clearly done for the sole benefit of the bailor or owner, and the bailee is liable only for gross negligence.

Just what constitutes gross negligence depends upon the nature of the goods, the custom of the place, and all the peculiar circumstances surrounding the transaction.

538. **Right to Use.**—The bailee generally has no right to use the property deposited, unless it is agreed upon between the parties, for he is supposed to return the property in as good condition as it was when received by him.

There are many cases, however, where a moderate use of the thing would be implied. For example, a horse deposited would be benefited by the exercise arising from moderate use; a milk cow deposited

would give the bailee the right to use the milk; and such articles as books and pictures would not be injured by proper use.

539. **Duties of Bailee.**—The bailee is bound to return the thing in as good condition as it was when received by him, and must also return all profits or increase. He is not liable for any damage to the thing deposited unless he has been grossly negligent, and if the article be stolen or destroyed he is not liable if he has used ordinary care.

In returning the thing deposited it is not necessary for the bailee to take it to the owner; but it is sufficient to tender it at his (the bailee's) place of business, and if it is not taken it remains at the owner's risk.

540. **Rights of Bailee.**—A bailee may terminate the contract at any time by giving the bailor reasonable notice to remove the goods. If they are not removed they may then be put off the premises.

No one is compelled to take goods on deposit against his will, for, like any other contract, it requires the element of consent; but if the goods are received, then the bailee can not avoid his responsibility; hence, if A finds some personal property which is lost he need not take charge of it unless he so desires, but if he

once takes possession of it he immediately becomes a bailee to the owner for the deposit.

Should the bailee find it necessary to put himself to any expense for the preservation of the deposit, he is entitled to recover from the owner the amount thus expended.

MANDATE

541. **Definition.**—A mandate is the bailment of personal property to be carried or worked upon without reward.

In a deposit the chief object is the keeping of the thing, while in mandate the keeping is only incidental to the principal object, which is the service to be performed.

Every case where any person undertakes to carry goods for another or to perform some act relating to same without recompense is a mandate.

542. **Parties.**—The owner, or the person delivering the goods is called the mandator (man-dā′-tor) and the one receiving them is called the mandatary (man′-dā-ta-ri).

543. **Degree of Diligence.**—The rule is the same as in case of a deposit, the mandatary being required to exercise only a slight degree of diligence, inasmuch as the bailment is entirely for the benefit of the mandator.

544. **Consideration.**—The service is performed gratuitously in case of a mandate, but it should not be presumed that there is no consideration, as the delivery of the goods and undertaking to perform the trust is sufficient consideration to support the contract.

545. **Liability of Bailee.**—It is a generally accepted rule that the bailee is liable for misfeasance (mis-fē′-zans), but not for nonfeasance (non-fē′-zans), that is, if the bailee enters upon the performance of the trust, even though it be without reward, he must exercise due diligence and skill, but if he does not enter upon the performance of the task he can not be held liable. To illustrate: A and B are farmers; A has fifty bushels of wheat in an open bin; B promises he will call next morning and haul the same to market for A without compensation. He undertakes it, but by his gross carelessness the wagon is upset and all the grain lost. B is responsible for misfeasance. On the other hand, if B had wholly ignored his promise and not undertaken to haul the wheat, he could not have been held liable at law for damages, even if a rain had fallen the next day and the wheat had been spoiled. This would have been a case of nonfeasance.

546. **Skill Required.**—The degree of skill required of one who undertakes to perform a gratuitous task upon goods belonging to another depends upon the char-

acter of the service to be performed and the profession or vocation of the bailee. A man who knows nothing of horses may let your team run away and break your carriage to pieces, and he would not be held to such strict accountability as a person who was skilled in handling horses; in other words, a person who undertakes the performance of a task is expected to use all the skill he possesses.

GRATUITOUS LOAN

547. **Definition.**—Gratuitous loan or a loan for use, as it is sometimes called, is the delivering of goods to another to be used by him without compensation.

The word loan is often used in a business sense when it has no reference to the bailment law, for the loan of money is not bailment. It should be kept in mind that bailment includes only loans where the identical property loaned is to be returned.

548. **Parties.**—The parties to contract or bailment in this class are called the lender and the borrower.

549. **Special Features.**—In a case of gratuitous loan the thing loaned is for the sole and exclusive use of the borrower, and there must not be any charge of any kind whatever for the use of the article.

550. **Diligence Required.**—In contracts of this class, the loan being exclusively for the benefit of the bor-

rower, it is only reasonable that he should use great diligence in the care of same. While the law requires this of him, it must not be assumed that he becomes an insurer of the safety of the thing borrowed, for such is not the case.

551. **Use of the Thing Borrowed.**—It is well established that in cases of gratuitous loan the thing loaned can not be used for any purpose other than that for which it was borrowed. C borrowed a horse to ride to a certain place. He afterwards changed his mind and went to another place, not so far, but in the opposite direction. The horse was injured without any fault of the borrower, but the court held him responsible on the ground that he did not put the horse to the use for which it was borrowed.

If a thing is borrowed for a definite length of time, the borrower has no right to use it after the expiration of that time.

552. **Liability of Borrower.**—It is a general rule that the borrower is exempt from all loss occasioned by inevitable accident or by causes that could not be foreseen or guarded against. He is, however, liable for all expenses in keeping or repairing the thing borrowed, provided his use of the thing made the repairs necessary. A borrowed a valuable violin from B, and although the doors were carefully locked a thief broke

in and stole the instrument. A was not held liable for the loss.

553. **Liability of Lender.**—While the lender receives no reward for a gratuitous loan, yet he is held liable for any damages growing out of the unsafe condition of the thing loaned, provided he knew of it, and did not make it known to the borrower. A loaned B a carriage horse, knowing him to be a vicious animal, but the fact was not mentioned to B. B, supposing the horse to be gentle, hitched him to his carriage, and a runaway followed, the carriage being broken to pieces. A was held responsible.

The borrower has a perfect right to the enjoyment and possession of the thing during the time for which it was borrowed, and the lender can not interfere or claim possession during that period.

PLEDGE

554. **Definition.**—A pledge or pawn consists of a delivery of personal property to be held as security for the payment of a debt. The contract is made in the interest and for the benefit of both parties. The parties are called the *pledgor* (plej'-or) and the *pledgee* (ple-je') or the *pawnor* and *pawnee*. The word "pawn," however, is seldom used except in connection with a certain class of pledgees called "pawnbrokers."

555. **Pledge Unlike Mortgage.**—In case of a pledge the pledgee always takes possession of the property and holds it as security, but this is not customary when a chattel mortgage is given, for the mortgage gives the holder a lien or claim against the property mortgaged, and if the debt is not paid the property may be sold according to law to meet the obligation.

556. **Collateral Security.**—When the thing pledged for the payment of a debt consists of notes, bills, bonds, certificates of stock, etc., it is usually called *collateral security* (kol-lat'-e-ral). The transfer of this collateral security is made by endorsement or assignment just the same as if it were a *bona fide* sale. This is a favorite class of security with banks and bankers when short time loans are desired.

557. **Delivery in Pledge.**—It is absolutely necessary that the pledgee should take possession of the pledged property, for a simple agreement that certain property shall stand as a pledge for a certain debt is not sufficient. An agreement made to pledge certain property at a certain future date is, however, valid and can be either enforced or made the basis for a damage suit.

558. **Must Retain Possession.**—The pledgee must retain possession of the property pledged if he would preserve his rights to same; yet if it be taken from

him by force or obtained by fraud he has a perfect right to recover it. He may also return it to the owner for some particular purpose, such as repairs, without losing his right of lien.

559. **The Debt.**—The thing pledged becomes security not only for the debt itself but for the interest on same and all legitimate expenses in preserving the thing pledged, and also the necessary cost of selling the same.

A person may give a pledge for the payment of his own debt or for the debt of another. The debt may be conditional or absolute; it may be for value received, or may be given to indemnify the pledgor for signing a bond or endorsing a note, etc.; but after the thing is pledged for the security of a particular debt it can not, except by special agreement, be held as a pledge for any other obligation.

560. **No Title.**—If the person from whom you receive property has no title to it, you will receive none. No man can convey to another that which he does not himself possess; therefore a pledgee who receives property from one who has no title to it will not be able to hold the same if the real owner demands it.

Stolen goods are often disposed of at pawnshops; but if they can be found the owner may take posses-

sion of them regardless of the amount of money the pawnbroker may have advanced on same.

561. **Rights to Sell Pledge.**—As soon as the debt becomes due the pledgee, after giving reasonable notice, may proceed to sell the property to satisfy the obligation. The pledgee has no right to retain the pledge in satisfaction of the debt; neither should he buy the same at his own sale. The sale should be public, and due diligence should be used to get the best possible price for the property. If the net proceeds of the sale do not pay the entire debt, the pledgor may be sued for the deficit; but if more than the amount of the debt is realized from the sale, the pledgee must account for the excess. When the property consists of several articles, only sufficient should be sold to satisfy the claim.

562. **Negotiable Paper an Exception.**—The pledgee who takes notes, bills, bonds, etc., as collateral security should, by special agreement, secure the power to sell same in case the debt is not paid at maturity. Otherwise, under the decisions of many states, the pledgee will be compelled to retain possession of them until they become due, at which time he is expected to collect them and apply the proceeds upon the debt.

In case long time bonds or mortgages are taken as

collateral security they might not mature until many years after the debt falls due.

BAILMENT OF HIRE

563. **Definition.**—The bailment of hire is a contract by which, for a compensation, some personal property is delivered to another for use or for the purpose of having some labor or service performed upon it.

The subject is usually separated into four divisions, as follows:

1. Hire of things.
2. Hire of services.
3. Hire of custody.
4. Hire of transportation.

HIRE OF THINGS

564. **Definition.**—In this class of bailment personal property is hired or rented by one person from another, as the renting of a piano or the hiring of a horse and carriage. The parties to the contract are called the *hirer* and the *letter*.

565. **Degree of Diligence.**—The hirer of an article is responsible for ordinary care and must restore the thing hired in as good condition as it was when received by him, ordinary wear and tear excepted. If the article is damaged or lost by his carelessness or by the carelessness of his servants, he is held responsi-

ble; but if it is lost or damaged without any fault or neglect of his, the letter must bear the loss.

566. **Duty of the Letter.**—It is the duty of the letter to deliver the thing, together with all accoutrements necessary for its proper use. For example, the hire of a horse and carriage would imply that the letter would also furnish a suitable laprobe, whip, etc.

The letter can not resume possession of the thing during the period for which it was hired, and he must not in any way interfere with its proper use by the hirer.

The hirer is required to pay all expenses of keeping an animal hired; but the letter must keep the thing or animal in proper condition for use.

567. **Use of the Thing.**—The thing hired must be used for no other purpose than that which is mentioned in the contract, and if the hirer uses it in any other manner he will become responsible for any injury or loss that may occur. The severity with which this law was formerly enforced has, however, been relaxed somewhat in recent years, and so long as the hirer uses the thing hired in a proper and careful manner, and substantially follows the agreement, he will not, as a rule, be held liable.

The following case is a good illustration: A hired

a horse for a certain journey, but unexpectedly met a friend and went out of his way to visit him; the horse stumbled and was injured. It was shown that A was careful and prudent in the use of the animal, and the court held that he was not liable for the injury.

HIRE OF SERVICES

568. **Definition.**—This kind of bailment consists in delivering to another goods upon which some work is to be done for a compensation. A carriage is delivered to a painter to be varnished; a clock is delivered to the jeweler to be repaired; cloth is delivered to a tailor to be made into a suit, etc.

569. **Degree of Skill.**—Every workman who holds himself out to the world as being capable of doing a certain class of work must possess at least ordinary skill in same.

One man may build a fence and another a telescope, but each must do his work in a skilful manner, that is, he must possess the kind of skill required for his particular work. If loss or damage result from lack of skill it is no excuse for a workman to say he did the best he could, for he is supposed to be competent.

570. **Duties of Workman.**—He must do the work himself unless the nature of the work is such that it is not considered a personal trust. If you employ an

artist to paint a picture for you, it would be unreasonable for him to have the work done by some one else, as you are paying for his personal skill. On the other hand, if you employ a contractor to build a residence for you, he would not be expected to do all the work himself, or even necessarily any part of it, but he must see that it is properly done.

571. **Liability for Loss.**—If property is delivered to a workman for repairs and it is lost or destroyed by no fault of his, the owner must bear the loss and also pay for the work already done on same. As a rule the loss must be sustained by the person who owns the goods.

HIRE OF CUSTODY

572. **Definition.**—Hire of custody is a contract whereby one person undertakes, for a reward, to give care or attention to the goods of another which have been left with him for that purpose. Any person may enter into a contract of this kind, but those who make it their regular business are known by certain names, such as agistors, warehousemen, wharfingers, etc.

573. **Agistor** (a-gis'-tor).—One who takes in stock to pasture is called an agistor. He must use ordinary skill, and if an injury occurs on account of his negligence he is of course liable. An agistor is not compelled to take all animals which are brought to him,

but may select only such as he desires. He does not have a lien on an animal for its keeping except by special agreement.

574. **Warehouseman.**—A warehouseman is one who receives goods to be stored in his warehouse for a compensation. He is not an insurer of the goods, and is not responsible for their loss unless he has been negligent.

He has a lien on the goods for his storage charges, but for no other debt.

575. **Wharfinger.**—A wharfinger (whar'-fin-jer) is one who keeps a wharf where goods are received and shipped for a consideration. His rights, duties, etc., are practically the same as a warehouseman.

576. **Hotel Keeper.**—A hotel keeper, or an innkeeper as they are usually called in law books, is one who makes it his business to furnish lodging and entertainment to those who are away from home.

He is compelled to take all who apply to him provided he has room for them, unless they are in some way and for good reason objectionable. For example, he could refuse to take an intoxicated person or one having a contagious disease, but should he refuse a person without just cause he would be liable to an action for damages. The proprietor of a hotel is usually called the landlord.

577. **Liability of Landlord.**—The liability of a landlord differs so much in the various states that it is impossible to give more than a few general rules here.

He is held to a very strict responsibility for the protection of the person and property of his guests, and is liable for any loss that occurs on account of his servants or even his guests, so far as it affects other guests. He is not chargeable, however, for losses that occur through the guest's own servants or companions.

Usually the hotel keeper may require the guests to leave certain valuables, such as money, jewelry, etc., at the office for safe-keeping.

578. **When Liability Begins.**—The hotel keeper's liability for the baggage of a patron begins as soon as the person enters the hotel for the purpose of becoming a guest, and ceases only when the guest takes his departure and his baggage has been delivered to him. If servants of the hotel take the baggage to or from the depot or cars, the hotel keeper is responsible for it.

579. **Rights of Landlord.**—In return for the extraordinary responsibility imposed upon a landlord he is given certain rights, among them being the privilege of requiring the guests to pay in advance. This right is not usually enforced, however, provided the

guest has baggage. The landlord has a lien on the guest's baggage for his bill.

580. **Who is a Guest.**—The law makes a distinction between a guest and a boarder, and there is a great difference between the responsibility of a hotel keeper and the keeper of a boarding house. A guest is a person stopping at a hotel who is away from home, either on pleasure or business; while a boarder is one who resides in the place.

A hotel may have both guests and boarders. The guests are supposed to be away from home and among strangers, with no means of protecting themselves against theft or robbery; therefore the landlord's responsibility is very great. The boarders are supposed to be living at home, and, understanding their surroundings, they are able to look after their own interests and are in little need of protection.

HIRE OF CARRIAGE AND TRANSPORTATION

581. **Definition.**—Hire of carriage or transportation is a contract by which one person agrees to carry goods or chattels of another for a consideration. There are two kinds, viz., Private Carriers and Common or Public Carriers.

582. **Private Carrier.**—A private carrier is one who carries goods for others on some particular occasion,

but does not make it his regular business. He is not bound to carry goods for all who wish to employ him, but may accept only such customers as he desires. He is responsible for ordinary diligence and skill, but he is not liable if the goods burn, are stolen, or perish on account of their own defect, unless he has failed to use ordinary care. By special agreement he may of course enlarge his responsibility.

583. **Common Carrier.**—A common or public carrier is one who makes it his business to carry or transport goods from place to place for any one who wishes to employ him. He may be a carrier of goods or passengers or both. Among the common carriers may be mentioned railroad, express, and steamboat companies, street car companies, expressmen, stages, omnibuses, etc.

584. **Public Character of Business.**—On account of the public nature of his work the common carrier is under obligations to accept all goods offered to him for transportation, and he is liable to an action in case he refuses to take them without good reasons.

585. **What They are Bound to Carry.**—Common carriers are bound to accept and transport only such goods as they profess to carry, for many carriers have not the facilities or equipments to handle all classes

of chattels. Neither can they be compelled to carry goods except by their regular route.

586. **Duties of Carrier.**—A common carrier must transport goods with reasonable dispatch and in the order of time they are received, but a preference may usually be given to goods of a perishable nature. The carrier must not deviate from his regular route, for if he does, and a loss occurs, he will be held responsible without regard of what may have caused the loss.

Carriers must provide suitable equipments for transporting all goods they profess to carry, and if some goods have special marks to indicate the care with which they are to be handled, the carrier must take notice of same, as "this side up," "handle with care," "glass," etc.

587. **Liability of Carrier.**—When you deliver goods to a carrier to be transported and he accepts them, a definite and positive contract has been entered into. He agrees not only to carry them to their destination, but he also becomes an absolute insurer of the safety of the goods and is liable for their loss unless destroyed by the act of God or the public enemy. The acts of God are such as floods, lightning, cyclone, etc., being such causes as can in no way be controlled by human efforts.

Public enemies are those against whom our country

has declared war, but this has no reference to common thieves and robbers.

588. **Limit Liability.**—The common carrier may limit his liability by special contract with the shipper, providing such agreement is reasonable and just in the eye of the law, and in some states the carrier is allowed to limit his liability by a notice to that effect, which is usually incorporated in the shipping receipt or bill of lading.

589. **May Demand Pay in Advance.**—Although the law compels common carriers to transport the goods of any one who offers them, it does not ask them to do business on credit, and they have the right to demand that the charges be paid in advance.

590. **When Liability Begins and Ends.**—The liability of a common carrier begins just as soon as the property is delivered at his customary place of receiving goods, and his responsibility ends when there remains no further duty to be done by the carrier.

It is customary in most places for the carrier, when the goods arrive, to notify the person to whom they are addressed, and if they are not taken away within a reasonable time the carrier is relieved of his responsibility as a carrier and may store them in a warehouse, and his responsibility will be reduced to that of a warehouseman.

591. **Delivery.**—A common carrier must deliver freight according to the address and is responsible for delivering to the wrong person. If the consignee is unknown to him he will require identification before allowing him to take the goods.

It is a matter of custom as to where delivery should be made. In all the larger cities the express companies make an actual delivery of the goods to the house or office named in the address on the package, and where this is the custom the companies are bound by it. The rule among railroad companies is just the reverse, and they consider the goods delivered when they are placed in their warehouse and the consignee has been notified of their arrival.

592. **The Carrier's Lien.**—If the carrying charges have not been paid in advance, the carrier has a lien on the goods for the same.

CARRIER OF PASSENGERS

593. **Definition.**—A common carrier of passengers is one who makes it his regular business to transport passengers from one place to another for a consideration. Such a carrier may also be a carrier of goods, but his responsibility is very different in the two cases.

594. **Liability of Carrier.**—The carrier of passen-

gers is not an absolute insurer of the safety of his patrons, for the reason that a passenger has his freedom to move about, and, being intelligent, he is able to avoid or escape from certain dangers. Should he therefore fail to exercise an ordinary degree of good judgment and on that account meet with an accident, he may not be able to recover damages from the carrier.

It should be remembered that while the carrier is not an insurer of the safety of the passengers he is held responsible for the slightest negligence in case of accident.

595. **Baggage.**—The sum paid for a ticket on a railroad not only entitles the purchaser to transportation, but also entitles him to take a certain amount of baggage with him.

This includes any article of a personal nature required for the comfort or convenience of the passenger. Just what would be considered baggage depends much upon the nature and object of the journey, and the sex, age, and circumstances of the passenger. In addition to wearing apparel he might include most any article which he intended to make personal use of during the journey.

596. **Not Baggage.**—Articles of merchandise carried either for sale or as samples are not regarded as bag-

gage unless the carrier, knowing the nature of same, accepts them as such.

Articles intended as gifts to friends are not baggage; in fact nothing can be justly regarded as baggage which is not intended for the personal use of the passenger.

BAILMENT

REVIEW QUESTIONS

Define bailment.

What are the parties to a bailment called?

Must the identical thing be returned?

Name the five classes of bailment given in this chapter.

What care must be taken?

Define a deposit.

How does it differ from a bank deposit?

Has the bailee a right to use the thing deposited?

Name the duties of bailee in case of deposit.

Define mandate.

Define gratuitous loan.

Who has a right to use the thing loaned?

What degree of diligence is required?

What is the liability of the borrower?

What is the liability of the lender?

Define a pledge.

What is collateral security?

Must the pledgee retain the property in his possession?

Is the pledge security for debts other than the one agreed upon?

May stolen goods be pledged?

Define bailment for hire.

Define hire of services.

What degree of skill must be employed by the workman?

Define hire of custody.

What is an agistor?

Who is a warehouseman?

Who is a wharfinger?

Who is a hotel keeper?

How does a hotel differ from a boarding house?

Who is a guest?

How does the responsibility of a landlord differ from that of a boarding house keeper?

Define hire of transportation?

Distinguish between private and public carriers.

What is a public carrier bound to carry?

What are some of the duties of common carriers?

Can he limit liability?

Must charges be paid in advance?

When does his liability begin?
Who is a common carrier of passengers?
Is his liability as great as the carrier of freight?
What is baggage?

CHAPTER XXVII

FIRE INSURANCE

597. **Definition.**—Fire insurance is a contract by which the insurance company agrees to indemnify or reimburse the person insured for loss or damages occasioned by fire during a certain specified period. The company is called the *insurer* and the person taking out the policy is called the *insured* or the *assured.* The contract of insurance is the *policy* and the price paid the company is called the *premium.*

598. **Popular Idea.**—The idea of fire insurance has become so popular that it is now almost a universal practice, and the person who neglects to protect himself from loss on his property by a suitable policy is regarded as lacking ordinary prudence, if indeed he is not considered reckless and improvident. There are two principal kinds of companies, the Stock Company and the Mutual Company.

599. **Stock Companies.**—The stock company is a corporation organized for the purpose of doing a general fire insurance business, and the capital consists of money paid in by the various stockholders. This kind of company makes all its contracts on the basis of a certain premium agreed upon in advance, and its

whole capital as well as its receipts is bound for the payment of its losses. The stock companies are often called the "Old Line Companies." All the money collected in premiums, which is not used in paying losses and defraying expenses, goes to the stockholders as profit.

600. **Mutual Companies.**—A mutual company is one in which each policy holder participates in the gains and losses, and the amount of premium paid to the company depends upon the amount of loss sustained during a certain period. Such companies usually have no capital stock, but assess the policy holders as funds are needed to meet the losses. In other words, each policy holder contributes a small sum called premium to a fund out of which is paid the losses of the members. This of course does not avert loss, but it distributes it, so that, instead of falling heavily on a few, it falls lightly on many, and this in reality is the true object of all insurance.

601. **Assessment Notes.**—The policy holder in a mutual or assessment company is usually required to give what is called an assessment note. This note is held by the company, and assessments are made on it as the losses occur. In this way the members get their insurance at actual cost, no one making a profit out of the business. The assessment note is usually given

for an amount equal to the premium charged by stock companies on similar risks; but only such part of the note is collected as is required to meet the actual losses.

602. **Lack Permanency.**—Any insurance company is good enough so long as you have no fire; but when a loss occurs, then the best is not any too good. Unquestionably there are many good companies conducted on the assessment plan, but one strong objection is constantly urged against them, that is, the lack of permanency. If they have small losses the assessments are of course light and the members are well pleased with the results, but if the losses are heavy the members become dissatisfied and many of them drop out. This of course if kept up for any considerable length of time means failure to the company.

603. **Insurable Interest.**—The person taking out insurance on property must have some financial interest in the property; otherwise the contract will be void. It is not necessary that this interest shall consist of absolute ownership, but it is sufficient if he has some pecuniary interest, such as that of mortgagee, mortgagor, trustee, agent, etc.

It would never do to grant policies of insurance to those who have no interest in the property insured, for that would tempt dishonest men to the crime of

arson, hoping they might collect the insurance. The party insured must have some interest in the property and this interest must exist not only at the time the policy is taken out but also at the time of the loss.

604. **Perils Insured Against.**—The ordinary policy insures the holder not only against loss by fire, but also against the loss occasioned by heat from the burning of adjacent property.

If damage results from water used in trying to put out the fire or gunpowder used in blowing up buildings to stop the fire from spreading, this is also covered by the policy.

605. **Loss by Lightning.**—It has been decided that a loss by lightning is not a loss by fire, and no damages can be collected unless ignition actually takes place. It is customary now for insurance companies to insert a lightning clause in all policies, and in that case they are of course liable for all loss resulting from lightning.

606. **Board of Underwriters.**—The board of underwriters is an organization composed of the leading insurance companies which are associated together for their mutual benefit. A committee is sent out to the various cities and towns, where they organize the local agents into what is called the local board of underwriters, and at the same time they carefully inspect

each building in the business portion of the city, making note of all details, such as the construction, whether brick, stone, or wood, kind of roof, the purpose for which it is used, its proximity to other buildings, etc. Taking all these details into consideration, they then fix the rate to be charged on each building and also the rate for the contents of same. This is published in a small book for the use of the agent and is called the "board rate," and no member of the association is allowed to deviate from same.

In some states this organization has been abandoned for the reason that the courts have declared it to be a trust and therefore illegal.

607. **The Policy.**—The policy is the contract between the insurer and the insured, and each company has a form of its own, but, owing to the ambiguity and uncertain meaning of many of them, and also on account of the tendency of the companies to surround themselves with so many conditions, exceptions, etc., the legislatures of some states have prescribed a form of policy and compel its use by all companies.

A policy usually contains a full description of the property, the premium paid, the amount of insurance, and the exact time to the hour when the insurance will expire.

608. **Valued or Open Policies.**—Policies are some-

times made for a definite sum to be paid in case of total destruction of the property, and such a policy is called a valued policy. Other policies provide that the company shall pay whatever the loss may prove to be; such are called open policies.

609. **Amount of Insurance.**—It is customary to insure property for two-thirds or even four-fifths of its value, and if the insured is a person of good standing he will have no trouble in getting whatever reasonable amount of insurance he may desire.

It should be remembered that the amount stated in the policy is not the sum the company agrees to pay in case of loss; but it is the limit they will pay; in other words, the insured agrees that the company will not have to pay any more than the face of the policy.

A owns a building worth $3,000 and insures it for $2,000. He has a loss of $500, and the company pays him $500. Had his loss been $3,000 he would have received only the face of his policy, $2,000.

610. **Loss Paid Deducted from Policy.**—When a partial loss occurs and the amount is paid by the company, the same is deducted from the face of the policy, for the remainder of the term of insurance.

A insured his house for $3,000 for one year. He had a loss at the end of three months of $1,000 which is paid and endorsed on the policy. The company in-

sured A for only $3,000, and as $1,000 has been paid, he will have but $2,000 insurance on the property for the remaining nine months unless he takes out a new policy and pays the additional premium.

611. **Cause of Fire.**—So long as no fraud has been committed on the part of the assured, it matters not how the fire originated, unless the policy contained some special provision touching on this point. Every one is of course supposed to use ordinary care, yet the company can not set up as a defense that the fire was caused by carelessness or negligence. Insurance would be of little protection to any one under such circumstances, as the majority of fires originate from some act of carelessness.

612. **Insurance in Several Companies.**—Many people prefer to insure in several companies instead of one, and if they need insurance for $4,000 they will take $1,000 in four different companies rather than the whole amount in one company. If this plan is pursued it is necessary to have each agent give his consent in writing on the policy. The following endorsement may be used: "Other insurance permitted without notice," or "Other concurrent insurance amounting to $3,000 permitted."

When more than one company has a policy on the same property and there is a partial loss the payment

of same is pro rated. In the above instance when each of four companies has a risk of $1,000, if there should be a loss of $100 sustained, each company would pay one-fourth of same, or $25.

613. **Valued Policy Law.**—A number of the states, including Nebraska, have enacted what is known as the valued policy law. This law provided that when insured property is totally destroyed, the amount of insurance written in the policy shall be taken as the true value of the property insured, and that the company can not set up as a defense that the property was insured for more than it was worth.

The justice of this law is based on the theory that the agent is a judge of the value of the property, and will not write a policy for more than the property is worth, and when the property is totally destroyed it is difficult to prove its real value; therefore the person insured, having paid premium on the face of the policy, is entitled to the full amount, provided no fraud has been practiced by him.

It is usually provided further that in case the company contests the payment of the claim, the court upon rendering judgment against the company shall also allow the insured a reasonable sum as attorney's fee. In case of a partial loss the company is to pay the actual amount of damage.

614. **Over Insurance.**—In states where the valued policy law is not in force the insurance company has a right in case of total loss to show that property was insured for more than its real value, and if that fact can be proven the company will have to pay only the actual value of the property destroyed. For example, A insures his stock of goods for $2,500 and it is afterwards totally destroyed by fire. If it can be proven that the stock was worth only $1,500 the insurance company will not be compelled to pay more than that sum.

615. **Vacancy.**—It is usually stipulated that the premises insured shall not become vacated without invalidating the contract; therefore, it is necessary to have the consent of the company endorsed on the policy in case the building is to be unoccupied for any considerable length of time.

616. **Adjustment of Loss.**—In case of loss the insured should follow closely the stipulations set forth in the policy. It is usually required that notice shall be given at once to the company, stating the approximate loss, the cause of fire, and all particulars regarding same. This statement is generally required to be made under oath. If notice is required to be given to some particular officer of the company, this should be strictly complied with, but if simply notice to the com-

pany is required it will be sufficient if the agent be notified.

617. **Surrender of Policies.**—Most policies have a provision which allows either the company or the insured to cancel the policy at any time. If for any reason the company cancels the contract it keeps only such a part of the premium as has been earned; but if the insured cancels the policy he will be charged the short term rates for the time the policy has been in force, and the balance will be returned to him in cash.

618. **False Representation.**—If any material facts are falsely represented by the insured at the time the policy is written, that will invalidate the contract, and the same is true of the intentional concealment of any important matter affecting the risk.

619. **Assignment of Policy.**—A policy of insurance is merely a personal contract and can not be assigned without the consent of the company. In case a loss occurs the insured then has a definite claim against the company, and that right or claim may be sold or transferred without the consent of the company.

B takes out a policy of $2,000 on a house. He sells the house to C, but retains the policy. The house burns down, but B can not collect anything, for he has sustained no loss; C can collect nothing because he has no insurance. It is well to keep in mind that

it is not the property which is insured but the individual. For a certain sum the owner is insured against loss on the property.

If property be transferred, on which there is insurance, the policy should be assigned at once, and the consent of the company endorsed on it; but the sale of property does not imply that the insurance in force goes with it, for the seller may surrender the policy to the company and take its value for cash.

620. **Right to Rebuild.**—Most policies contain a stipulation giving the company the right to rebuild the property instead of paying the amount in cash. This of course would be done only in cases where it was thought the property was overvalued.

621. **Change of Risk.**—The premium charged for insurance on any building is high or low according to the hazard or danger, and any act on the part of the owner changing the hazard will render the policy void. This may be done by materially changing the property, adding to it, erecting other buildings near it, or changing the use or ownership of the building. The consent of the company should always be obtained before doing anything that is likely to affect the policy.

FIRE INSURANCE

REVIEW QUESTIONS

Define fire insurance.

What is a policy?

What is the premium?

Is fire insurance a good thing?

What is a stock company?

What is a mutual company?

Which is the cheaper?

Which is the better?

What objection is there to a mutual company?

What is an assessment note?

What is meant by an insurable interest?

Does fire insurance cover loss by lightning?

What is the "board of underwriters"?

What is a valued policy?

For what amount may property be insured?

May the same property be insured in several companies?

What is the "valued policy law"?

If a person insures his property for more than its value, can he collect all the insurance if it burns?

What effect does false representation have on the policy?

May a policy be assigned without the consent of the company?

Has the company a right to rebuild the property destroyed instead of paying the insurance?

CHAPTER XXVIII

LIFE INSURANCE

622. **Definition.**—Life insurance is a contract by which the insurance company agrees for a stipulated consideration to pay a certain sum of money to the person named in the policy at the death of the insured; or if the insured lives to a certain age the company will pay it to him personally.

623. **Parties.**—There are three parties to a contract of life insurance: (1) the company or insurer; (2) the person whose life is the subject of the risk, called the insured; (3) the one to whom the money is made payable, called the beneficiary. A person may, if he desires, have the insurance payable to himself or his estate, and in that case it would at his death be divided among his heirs according to the law of the state.

624. **Policy.**—The policy is the contract between the insured and the company, and, aside from specifying the amount of insurance, name of the beneficiary, and the premium paid, it usually contains stipulations that the insured shall not engage in certain hazardous occupations or remove to or travel in certain un-

healthy regions or countries without the consent of the company.

625. **Fire and Life Insurance Compared.**—In fire insurance the value of the property insured is never lost sight of. It is made the basis of the contract of insurance as well as the basis for settlement in case of loss. The insured is supposed when a loss occurs to be fully indemnified by the company, but it is not the intention that he should receive either more or less than the amount of the actual loss sustained, provided he has enough insurance to cover the loss.

On the other hand, life insurance is not regarded as a contract of indemnity, and the amount paid in event of death is not intended in any sense as a reparation or indemnity for the loss sustained in the death of the assured.

A fire may never come to one's home, but death is absolutely certain, and the man of small means who fails to take out a policy of life insurance and thus make some provision for his family after he is gone is regarded as either very thoughtless or very selfish.

626. **Amount of Insurance.**—Any one who can pass the physical examination may take all the insurance on his life that he is able to pay for, and he may insure in as many different companies as he desires.

627. **Insurable Interest.**—No one has a right to take

out insurance on the life of another unless he has some interest in that person either by ties of blood, marriage, or contract. Any person may have his own life insured, and he may have the life of any one else insured if the relations are such that he would suffer a pecuniary loss in case of the death of the assured. One partner may have the life of his copartner insured. A creditor has an insurable interest in the life of his debtor. A child may insure its parents, or the parents may insure the child.

628. **Exception.**—While it is necessary to have an insurable interest at the time the policy is taken out, such interest need not exist at the time of the death of the insured; therefore if A owed you $1,000 and you had his life insured for that amount for one year, he might pay you the debt in three months, and you would also receive the insurance in case he died before the end of the year.

629. **Does not Cancel Debt.**—If a creditor takes out a policy on the life of the debtor he will be able to collect the insurance in case the debtor dies, but this will not cancel the debt, and the creditor may collect that also from the estate of the deceased debtor.

Example.—Brown & Co. sell C a bill of goods for $5,000. They feel sure he will pay if he lives, but, fearing a loss in case he should die, they take out a

policy of $5,000 on C's life. Soon afterward C dies. Brown & Co. receive $5,000 from the insurance company, but the estate of C still owes them $5,000, and they have a right to collect same. Had Mr. C taken out insurance himself in favor of Brown & Co. and paid the premium himself, then the insurance would have canceled the debt.

630. **Beneficiary.**—When a person places insurance on his own life and pays the premium himself, he has a right to make the policy payable to any one, even though such person be a stranger and has no insurable interest in him. This individual who is to receive the money at the death of the insured is called the beneficiary.

The rule requiring the beneficiary to have an insurable interest in the assured applies only when the beneficiary takes out the insurance himself and pays the premium on same.

631. **Rights of Creditors.**—In most states the life insurance of the deceased is not liable for the debts of the insured unless it was made payable to his estate. *Example.*—Mr. B carries $5,000 life insurance, payable to his wife, and at his death it is learned that the debts are much more than can be paid from the estate; yet no part of the insurance money can be taken from Mrs. B to pay these debts.

632. **Change of Beneficiary.**—In the absence of any statute or stipulation in the policy or articles of incorporation to the contrary, the assured may assign the policy or change the beneficiary at his pleasure without consulting the company, provided he owns the policy and the same is made payable to himself.

It is held that where the policy is made payable to some party other than the assured, it can not then be assigned without the consent of the beneficiary. Policies usually contain provisions for assignment, and these should be adhered to strictly.

633. **Application.**—The party seeking insurance is required to make a formal written application in which is given a great variety of information, touching upon the age, occupation, habits, health, etc., of the applicant. But it does not stop there, for the company wants to know the number of brothers and sisters he has; also their age and the condition of health of each, and if any are dead, at what age they died, and from what cause. It also asks the same question about the applicant's parents and grandparents.

The answers to all these questions, together with the report of the examining physician, will form the basis for a decision as to whether or not the company will accept the application and issue the policy.

These answers should all be made in good faith, for they become a part of the contract with the company, and the validity of the policy may depend upon the correctness of these answers.

634. **Kinds of Companies.**—There are three principal kinds of life insurance companies: stock companies, cooperative companies or fraternal orders as they are more often called, and mutual companies.

635. **Stock Companies.**—The stock companies are organized and conducted in the same general manner as stock companies engaged in other lines of business, the object, of course, being to make money for the shareholders.

636. **Fraternal Insurance Orders.**—Insurance societies of this kind are usually organized on the lodge plan, and each member is assessed a fixed sum each month or quarter to pay the losses as they occur. Some orders grade the amount of assessment according to the age of the member on joining, the younger members paying less than those of advanced years.

Other orders assess all the same amount, but vary the amount of the policy according to the age of the applicant, the younger members receiving larger policies than the older ones. This principle is also sometimes used with reference to the occupation, the members engaged in some hazardous occupation, such as

railroading, receiving smaller policies than those in less dangerous work; yet all pay the same premium.

637. **No Investment Feature.**—Insurance which is taken in these fraternal orders is purely for protection, and when the associations are conducted in an efficient manner, the good they do can scarcely be overestimated. It should be observed, however, that many small orders of this kind are started by individuals who have not the ability necessary to carry them to success, and it is always the safest plan to select a society which is well established and has several thousand members.

638. **Disadvantages of Fraternal Insurance.**—While life insurance in the best fraternal orders is by far cheaper than can be had by any other plan, yet it has one weak point, viz., lack of permanency. As a rule, fraternal insurance orders are comparatively short-lived. An order becomes popular and grows rapidly for a number of years, then it begins to decline. When new members cease to come in and old ones begin to pass away rapidly, the assessments must be made oftener. This causes others to drop out, especially the younger members, and if the decline can not be checked by the addition of new members, it is a matter of only a few years when the order will have to disband.

639. **Good While They Last.**—As long as a fraternal insurance order has a large membership there is no trouble about paying all the losses promptly, in fact, it is often claimed that they are more prompt in that respect than old line companies. But even if an order does disband, it can not be claimed that the members lose anything, for they have good insurance during the life of the order.

The only disadvantage comes from the fact that a man may take out insurance in one of these orders and, after paying the assessments for twenty or thirty years, the order is likely to quit business and leave him without insurance. This would cause him no injury, provided he could take out another policy in some young and thriving association; but by that time he would perhaps be too old, or unable to pass the physical examination; hence at the period of life when his family needs protection most he is without insurance, and is unable to get it in any company at any price.

640. **Mutual Companies.**—Insurance companies of this class have no capital stock, but the premium received is invested in bonds, stocks, mortgages, etc., and all profits resulting therefrom belong to the policy holders. Companies organized on this plan are in high favor with the insuring public, and especially

with those persons who wish to combine an investment with life insurance. Some of these companies have grown to such gigantic proportions that they easily rank among the greatest financial institutions of the world. The three largest mutual life insurance companies in this country have assets aggregating over $900,000,000, or about as much as the combined capital of all the national, state, and private banks in the United States. Aside from the three companies referred to, there are many others controlling immense fortunes.

641. **How Accumulated.**—To whom do these millions belong, and how are they accumulated? This is a question which naturally arises. To answer briefly, they belong to the policy holders and are accumulated by the policy holder paying the company a larger premium than is necessary for the settlement of immediate losses. If the policy owners paid only enough to meet the losses as they occurred, it would of course be impossible to accumulate any fund, and they would not differ materially from the fraternal associations.

642. **Plans of Insurance.**—There are many different plans for insurance, but we will notice only a few which are in most common use. The majority of these plans combine an investment with life insurance. The higher the premium the more prominent the invest-

ment feature becomes, while the lowest premium buys a policy of life insurance only.

643. **Ordinary Life Policy.**—An ordinary life policy is one in which an annual premium is paid during the life of the assured, and at his death the face of the policy is payable to the beneficiary. This plan is purely life insurance, and the amount of premium to be paid is less than in any other form of policy.

644. **Limited Payment Policy.**—This is a policy providing for the payment of a limited number of annual premiums, usually twenty, after which no further payments will be required.

At the end of the twenty years, if the premiums are all paid the company will issue the assured a paid up policy payable at his death to the person therein named. The premium on this plan is higher than on an ordinary life policy; but many prefer a little higher rate for twenty years that they may have the satisfaction of knowing the policy is then fully paid up. A man of thirty will usually find the next twenty years to be the most productive period of his life, but it might be quite a hardship to pay the premiums each year after reaching an advanced age.

645. **Endowment and Bond Policies.**—In the various forms of endowment and bond policies the investment feature is made very prominent; therefore such poli-

cies are suited to persons who wish to invest their money at a low rate of interest, aside from carrying insurance.

After the premiums have been paid for a certain number of years the assured may receive the insurance himself if alive, but of course the amount he receives will depend largely upon the amount he has paid in.

It requires a certain sum of money to meet the death claims and expenses, and whatever amount is paid by the insured to the company in excess of this requirement is practically a loan to the company, to be returned to him with increase if he lives to a certain age, or according to the terms of the policy.

646. **Continuous Instalments.**—The continuous instalment policy offers the surest protection that a man can provide for his family through the medium of life insurance. Under this plan the beneficiary does not receive the full amount of the insurance upon the death of the assured, but is paid a stipulated sum yearly or quarterly during life. In determining the amount of premium to be charged, the age of the beneficiary as well as that of the assured must be taken into account. To illustrate, Mr. B, twenty-five years of age, takes out a $5,000, twenty payment bond policy, continuous instalment, on his life, payable at his

death to his wife, who is twenty-three years old. The annual premium is $128.45. Should he live to make twenty payments the policy would then be paid up and continue in full force without further payment. At the death of Mr. B the company will pay his wife $326.30 and continue to pay her this amount annually as long as she lives. Should she die before twenty payments have been paid to her, the company will continue the payments to her heirs until a total of twenty yearly instalments have been paid.

647. **Advantage of Continuous Instalment.**—The real object of life insurance is protection, and the man who leaves his wife or child a life income of $326.30 annually has given a far surer protection than would be afforded by leaving $5,000 in one amount.

The risk incident to the investment and reinvestment of a large sum of money by those not trained to such responsibilities is very great, and in many cases the money disappears in a few months, or years at most, and the plans and savings of a lifetime come to naught.

648. **Manner of Death.**—Most policies contain a provision that the contract shall become void in case the insured commits suicide within two years from the date of the policy, or in case the insured loses his life by fighting a duel. Death at the hands of justice

also revokes the contract; this includes death at the hands of a public executioner, or being killed by an officer while resisting arrest, or committing burglary.

LIFE INSURANCE

REVIEW QUESTIONS

Define life insurance.

Who is a beneficiary?

Is there any limit to the amount of insurance a person may carry on his life?

What is meant by having an insurable interest?

Is it necessary that an insurable interest exist at the time of the death of the assured?

If a creditor takes out a policy on the life of the debtor, will the insurance cancel the debt, if the insured dies?

May the beneficiary be changed?

What is the nature of the application for life insurance?

What is a stock company?

What is a fraternal company?

What is a mutual company?

Is there any investment feature in the fraternal company?

What is the chief objection to fraternal companies?

How do the mutual companies accumulate such large assets?

Define an ordinary life policy.

Define a limited payment policy.

Define endowment and bond policies.

Define continuous instalment policies.

What is the advantage of a continuous instalment policy?

CHAPTER XXIX

CASUALTY INSURANCE

649. **Definition.**—Casualty insurance is a contract by which the company agrees to indemnify the assured for loss or damage growing out of unforeseen casualties or accidents.

This branch of insurance is comparatively new, and while it will perhaps never reach the degree of importance accorded to life and fire insurance, yet it is meeting with much favor, especially in the cities.

650. **Accident Insurance.**—This consists of insurance against injury or loss of life from accidental cause. The contract usually specifies the amount of indemnity to be paid each week in case the insured is incapacitated for work by accident; it also states the amount to be paid in case of the loss of an eye, hand, or foot, and names the fixed sum to be paid in case death results from the accident within a certain specified time.

When a fixed premium is charged it is not determined by the age or health of the insured, as in life insurance, but is based upon the hazards or dangers of the business in which he is engaged.

Contracts of accident insurance are usually made

by the year or quarter, but for the convenience of travelers, all railway ticket offices will sell to any one, for twenty-five cents, a policy of $5,000 for one day.

651. **Employers' Insurance.**—Every person who employs a large number of workmen is constantly annoyed with suits for damage. These suits are often based upon just claims and usually grow out of accidents caused by lack of suitable apparatus, or machinery, or negligence of some of the workmen, etc.; but whether the claim is just or not, the employer must undergo the vexation and unpleasantness of a lawsuit.

If he takes out an Employer's Liability policy he is then protected by the company from all losses of this kind and also from the trouble of looking after the matter.

When an accident occurs the insurance company sends a representative to thoroughly investigate the matter, and the employer has nothing whatever to do with it.

If the company decides, after learning the facts, that the employer is liable, they settle the claim at once, but if the injured party brings a suit, the insurance company takes complete charge of same and pays all expenses and costs, just as if the suit was brought against it.

652. **Plate Glass Insurance.**—This class of insurance

has grown to considerable importance in recent years, and it is now customary to insure large plate glass windows against breakage. Glass of this kind is very expensive and is constantly exposed to the danger of being broken by wind, hail, or some other cause. Large plate glass mirrors are often insured also. In case of loss, the company usually replaces the glass instead of paying the money; for by special arrangement they are able to get a new one at a lower price than the insured could purchase it.

653. **Guaranty of Title.**—There are a number of very large companies now engaged in the business of guaranteeing the titles of real estate.

When one sells or mortgages real estate he is expected to give an abstract of title to same. This is very expensive, especially in the parts of the country which have long been settled, for the abstract must contain a complete history of the property, from the time of the first grant down to date.

Instead of having an abstract made the owner makes application for a policy guaranteeing the title. The company has its expert real estate attorney carefully examine the records, and if the title is found good, a policy is issued guaranteeing to the purchaser that the title is clear.

In case the title is afterwards challenged by any

one, the company takes full charge of the defense and settles the case in whatever manner is deemed best, but in any event the purchaser is not allowed to suffer loss.

A new policy must be taken out each time the land is transferred, as the policy can not be assigned with the property.

654. **Steam Boilers.**—There are companies that make a special business of insuring against loss from explosion or rupture of steam boilers. Insurance of this kind covers not alone the damage done to the boiler, but to other property owned by the assured as well. If any person is injured or his property destroyed by the explosion the policy protects the assured from loss on that account also; but it does not cover loss by fire, even when it is caused by the explosion.

The company sends its expert around frequently to test the boilers, and unless they are kept in good condition the policy may be canceled.

655. **Guaranty of Honesty.**—Surety companies now do a very large business issuing policies guaranteeing the honesty of the person named therein. Persons who have been appointed to responsible positions are usually required to give a bond for the faithful discharge of their duties. Many do not like to ask a friend to

sign a bond, and many others have no friends of high financial standing who are willing to sign with them. They therefore make application to a bond company, and if the applicant can give satisfactory references and the company finds that he has a good record, a policy or bond will be issued to the individual or corporation upon the payment of a premium by the employee.

CASUALTY INSURANCE

REVIEW QUESTIONS

Define casualty insurance.

Define accident insurance.

Is the age taken into consideration in fixing the premium?

Define employer's liability policy.

Define plate glass insurance.

Define steam boiler insurance.

Define guaranty of title insurance.

Define guaranty of honesty insurance.

CHAPTER XXX

REAL ESTATE

656. **Definition.**—Real estate consists of land and everything which is permanently attached to same. It includes all those things which man has artificially attached to the earth, such as houses, fences, etc., as well as the results of nature's work, such as trees, oil, coal, minerals, etc. The owner of the land is said to have a title to everything upon it, everything in the sky above it, and everything in the earth beneath it. His title therefore extends upward without limit and downward to the center of the earth.

657. **Crops, Fruit, etc.**—The purchaser of land is entitled to all growing crops, whether they be grain or fruit, unless it is otherwise stipulated in the deed, but crops which have come to full maturity and which have ceased to draw nourishment from the soil, and are ready to be harvested, have been held to be personal property, although still attached to the land.

658. **Easements.**—Under the title of easements may be listed all the rights, interests, and privileges which the public or the owner of lands have in the lands belonging to another.

Among the most important kinds of easements may

be mentioned, (1) right of way, (2) water rights, (3) party walls, (4) right to draw water, oil, or gas by pipes or conduits across the land of another.

659. **Right of Way.**—This consists of the right to pass over the land belonging to another person. The object may be to reach a highway, another piece of land, a well or spring, or for any other necessary purpose.

This right may be conveyed in the same manner in which the land itself is conveyed, that is, by deed, or it may arise from necessity or by prescription.

If a man sells another a piece of land wholly surrounded by his own land, the grant carries with it the right to pass to and from the purchased land, even though the right of way is not mentioned in the deed. This would be a right of way arising from necessity, for the grant of land would of course be useless without a road leading to it. If, however, a highway should afterwards be laid out affording access to the land, the former right would be lost.

The right of way by prescription arises when a person has passed over the land of another and used it as a lane or road for more than twenty years.

660. **Right of Water.**—The owner of land has a certain right to the water in streams running across the property, and the law will protect these rights as rig-

idly as it will the ownership of the land. He has the right to the natural and uninterrupted flow of the water across his estate and may use and enjoy the same, but he must return it in its natural course to the owner below him, without diminishing its quantity in a material degree or polluting it with impurities.

The owner has no right to dam up a stream so that it will flood the land above him. If a farm is bounded by a stream the title extends to the thread of the stream, that is, the channel where the water would run last if the stream were drying up.

661. **Party Walls.**—A party wall is one which supports two adjoining buildings. Should it at any time need repair both owners are bound to contribute to such expense.

If the wall be destroyed by fire the title of the joint owners returns to the original dividing line of the land, and if one rebuilds so that a part of the wall extends over on the land of his neighbor, the latter may use the same without paying for it.

662. **Trees.**—Any one acquiring the title of land acquires the title of the trees on same also. This does not apply to trees which have already been cut and prepared for market, such as cord wood, posts, logs, etc., for they are regarded as personal property.

If trees growing on the land adjacent to your own are so near the line that they extend their branches over your property, you have a right to cut off such overhanging branches and put them off your premises, but should there be fruit on the branches, you have no right to it, and the owner may peaceably enter and take the same.

663. **Estate.**—An estate consists of the interest which a person has in landed property. This may consist of an absolute ownership or simply a limited or conditional interest. It may be a right to use the property for life, or for a limited time, or until the happening of some event. Usually the owner of any estate may sell and convey to another whatever interest he possesses in it, unless such conveyance is forbidden either expressly or by implication in the grant by which he received the estate.

664. **Fee Simple.**—The highest estate possible to be had in property is called a fee simple. It is a pure inheritance without condition or qualification. The owner of land held in fee simple has unlimited power to sell, mortgage, or lease the same, or to dispose of it by will at death. If he neither deeds nor wills the estate to any one, the title in fee simple will pass to his heirs at his death.

665. **Life Estate.**—An estate for life is not an estate

of inheritance, and the rights of the holder to enjoy its benefits and profits are limited. He is bound to keep the premises in repair, but is not expected to build or replace property destroyed by no fault of his.

The two life estates, Dower and Curtesy, will be briefly considered.

666. **Dower.**—This is the life interest which the wife has in her husband's landed property. In most states the widow has, during her life, one-third of the real estate of which the husband was seized during marriage, and she is also given a part of the personal property. The dower right exists as soon as the husband acquires property, but it is said to be inchoate (in'-kō-āt), that is, it is just commenced and does not become an active estate until after the husband's death.

The dower terminates at the widow's death and descends to the husband's heirs. In most states the wife can not be barred from her dower, but of course she can voluntarily release the same. This is usually done by signing a deed of conveyance with her husband.

If the husband leaves a will giving his wife certain other property in lieu of her dower, she is not obliged to take it, but may choose between the will and the dower.

667. **Homestead.**—The family residence and a certain amount of land adjoining the same is, in most of

the states, exempt, and can not be taken by process of law to pay debts, unless the debt is secured by a mortgage or mechanic's lien on same, and in case of mortgage the wife must sign with her husband, the same as in a deed of conveyance.

668. **By Curtesy.**—The estate of curtesy is the right which the husband has in his wife's landed property of which she was seized during marriage. The husband is not limited to one-third as the wife is by dower, but he is given a life interest in the wife's entire estate. The one condition of the vesting of this estate is that there shall be issue born alive. The law pertaining to curtesy and dower has been abolished in some states and modified in many others, and any one especially interested should consult the statutes of his own state.

669. **Estate for Years.**—This more properly comes under the chapter of "Landlords and Tenants." An estate for years is usually conveyed by an instrument called a lease. The owner of an estate for years is not a freeholder in any sense, for the freeholder must own either an estate in fee simple or a life estate.

670. **Conditional Estate.**—A conditional estate is one in which the grant qualifies or restricts the interest which is conveyed. The terms of the deed may make the transfer conditional upon the performance of some

particular act, or it may declare that a certain act will defeat the estate.

A husband may leave by will certain lands to his wife to be used and enjoyed by her during her natural life, upon condition that she remain a widow. It is sometimes stipulated in a deed of transfer that the property shall revert back to the grantor in case it is ever used for the sale of intoxicating liquors or for certain other purposes therein mentioned.

671. **Title to Real Estate.**—Title has reference to the means by which the owner of land has legal possession of it. It is a well known principle in law that no one can acquire a good title to anything from one who does not himself possess a clear title.

672. **Whence the Title.**—Under the common law of England the original source of title is the king. In this country, the title to the greater part of the land is derived from the United States.

There are, however, some exceptions; for the private grants made by the French, Spanish, and Mexican governments in the Louisiana purchase, in Texas, in California, and some of the other states on the Pacific slope, were protected by the various treaties of concession; therefore the present owners of such grants do not derive their titles from the United States.

A few of the original thirteen states claimed to own all unoccupied soil lying west of their boundaries, and in a number of cases they granted a portion of same to private purchasers before they surrendered their rights to the nation, and in such cases the titles are derived from the individual states.

673. **Title by Descent.**—Title by descent is the title which is acquired by the heir who inherits property from another.

When a person dies without a will his property is distributed among his relatives according to the law of descent, the statutes of the individual states governing in the matter.

674. **Title by Will.**—A will is a document by which an individual makes disposition of his property, the title to pass at his death. The same will may dispose of both real estate and personal property, but in case of landed property it is called a devise, while if personal property it is known as a legacy or bequest.

675. **Title by Prescription.**—The title by prescription is acquired in real estate by an uninterrupted, undisputed, and peaceable occupancy of the land for a period of twenty years. A few of the states have fixed the time a little longer or a little shorter than twenty years, as it is regulated by statutes.

676. **Conditions.**—It should be remembered that the

possession of the land for twenty years does not in itself give a title, but there are other conditions to acquiring the title, viz., the possession must be continuous, it must be undisputed, it must be open and visible to others. Suppose the fence separating your field from your neighbor's is ten feet on your land, and at the end of twenty years your neighbor claims the strip of land as his own. To justify this claim he must show that the fence has not only stood there twenty years, but that he has used the land with your knowledge and without objection from you, and that you knew during these years what your rights were and made no protest.

677. **Title by Involuntary Alienation.**—Whenever the title to land is alienated or transferred without the consent of the owner it is said to be involuntary alienation. Such transfers often take place in one of the following ways:

1. When land is sold for taxes.

2. When land is sold upon execution to satisfy a mortgage or other debt.

3. When the government exercises the right of eminent domain.

4. When the lands of infants or other incompetent persons are sold by order of court for their benefit.

678. **Public Lands.**—The public lands in the United

States consist of all the vast territory which came into the possession of the Union at the close of the Revolutionary war, together with all that was later ceded by the different states, as well as the immense additions which have since been made by treaty or by conquest.

679. **Metes and Bounds.**—A very unsatisfactory system of land surveying was in use among the colonists. The purchasers or settlers of land fixed the boundaries by the streams when they could, but when this was impossible they "blazed" the trees or marked the stones to indicate the limit of their estates. This was called the system of "metes and bounds," but it has proved a source of endless dispute and litigation.

680. **United States Survey.**—At an early date Congress adopted a very simple and at the same time a very satisfactory system of surveying the public domain. It was first put into practical use in 1802, and with a few slight changes it has continued in use to the present time.

681. **Land District.**—The whole of the public domain is divided into what is called land districts, and a surveyor general, who has full control of all surveys, is placed in charge of each district.

682. **Principal Meridian.**—Through each district a meridian line is run, the same being carefully estab-

lished by astronomical measurements and extending through the entire district.

This principal meridian is given a particular name and is made the standard for all north and south lines, and all guide meridians cutting the domain into smaller tracts must be parallel with it.

The principal meridian extending through Nebraska and Kansas is called the Sixth Principal Meridian, and it coincides with 97° 22′ west from Greenwich.

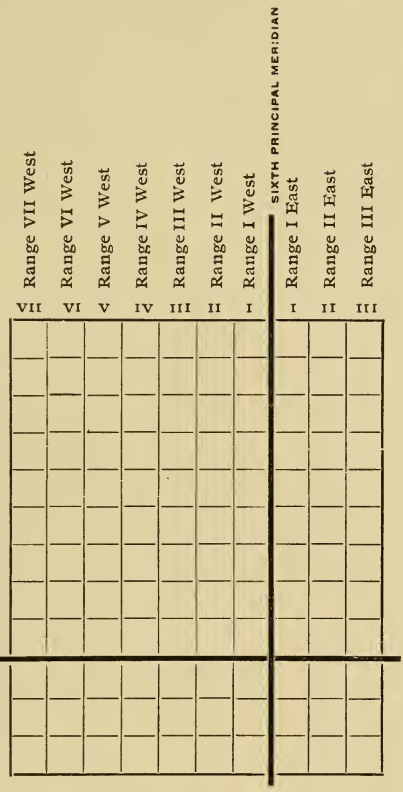
683. **Ranges.**—Other meridians are drawn six miles apart parallel with the principal meridian. This cuts the entire district into long strips six miles wide extending north and south, and these strips are called *ranges*. They are numbered in regular order I, II, III, etc., both east and west from the principal meridian.

684. **Base Lines.**—Thus far we have noticed only the meridian lines, all of which run north and south, but another important line is called the base line, which runs east and west through the district.

Like the principal meridian, its position is accurately determined astronomically. The principal base line for Nebraska and Kansas coincides with the fortieth parallel of north latitude, and forms the boundary between the two states.

685. **Townships.**—Parallel with the base line other

No. 72.—Arrangement of Townships and Ranges



lines are drawn six miles apart. This cuts the land of the entire district into tracts six miles square, each containing thirty-six square miles or 23,040 acres "as nearly as may be." Each of these squares is called a *township,* or *geographical township,* that it may not be confused with organized townships.

The townships are numbered 1, 2, 3, etc., north and south from the principal parallel of latitude, called the base line. Thus, if the nearest point in a township lies twenty-four miles east of the principal meridian and twenty miles north of the base line it is called township four north, range five east.

686. **Sections.**—The townships, which, as we have seen, are six miles square, are divided into tracts only one mile square, containing 640 acres and called *sections*. The sections in every township are numbered from one to thirty-six, beginning at the northeast corner of the township and going west from one to six, then east from seven to twelve, and so on to thirty-six, which is always at the southeast corner of the township.

The section may be further divided into half sections, quarter sections, eighties, forties, etc.

687. **School Section.**—In some of the western states section sixteen in each township has been granted by the United States for the benefit of the public schools. In Nebraska sections sixteen and thirty-six of each township have been granted to the State for school purposes.

688. **Simple System.**—This system of surveying is so simple that the smallest subdivision of land may be described with the greatest accuracy, and located with

ease. Thus: the N. W. ¼ of the N. E. ¼ of Section 10, Township 5 N., Range 6 W. of the Sixth Principal Meridian, describes a certain forty acres so accurately that there can be no possible mistake.

689. **City Lots.**—In cities the land is divided into blocks and lots, and may be described by simply referring to the number of the lot, block, and name of the addition, if it is not in the original town, thus: lot 4, block 7, Baker's addition to the city of Grand Island, Hall county, Nebraska.

690. **Converging of Meridians.**—The meridian lines converge as they extend northward, and, taking into account this obliquity of the meridians, proper offsets are made in accordance with an established system. Some fractional townships result from making this correction.

NUISANCE

691. **Definition.**—A nuisance is anything that annoys, offends, or interferes with the enjoyment of life or the ordinary use of property.

Every individual has a right to pure air, pure water, plenty of light, to be free from unreasonable noise, offensive odors, etc. Anything which interferes with these rights is called a nuisance.

692. **Public Nuisance.**—When a nuisance has reached such magnitude that it affects an entire neighborhood

or locality it is called a public nuisance, and the offender is liable to a criminal prosecution by the public authorities. A public nuisance may be also a private nuisance as to any one especially injured.

693. **Private Nuisance.**—A private nuisance is one that offends a single individual or only a few persons, and the person creating or maintaining it is liable only to an action for damages by the injured parties.

694. **Rights of Others.**—A person occupying property, even though he owns it in fee simple, must show due respect for certain rights which the law gives to his neighbor. He must not do anything or conduct any business that will seriously annoy his neighbor or interfere with the free enjoyment of his property. Thus, the use of steam power, though on one's own premises and for a lawful purpose, may be a nuisance if by reason of being in one of several closely built dwellings the vibration and noise cause unreasonable injury to the property or annoyance to the occupants.

695. **What Constitutes a Nuisance.**—It is difficult to say just what constitutes a nuisance, as everything depends upon the circumstances surrounding the individual case.

Any serious obstruction of a highway, except when authorized by law, is a nuisance, but the temporary

use of a reasonable part of a highway for a legitimate purpose, such as removing a building or the deposit of building materials being used, is not necessarily a nuisance.

A saloon, billiard hall, bowling alley, and other similar resorts may or may not be a nuisance according to the manner in which it is conducted. Smoke, offensive odors, injurious vapors, ringing of bells, slaughter houses, noises from factories, and many other things have been held in some cases to be nuisances, and in others not to be nuisances, according to the merits of the individual case.

696. **Must be Reasonable.**—Men must be reasonable in their demands, and it should not be supposed that every disagreeable noise or irritating sound constitutes a nuisance. Some people being of nervous temperament and highly sensitive are often disturbed by something which those of ordinary sensibilities and different temperament would not regard as serious.

REAL ESTATE

REVIEW QUESTIONS

Define real estate.

Does it include crops, trees, etc.?

Define easement.

Define right of way.

Define water right.

Define party wall.

If trees grow near the dividing line and hang over on each side of the fence, what are the rights of the owner of the land?

What is meant by an estate?

What is meant by fee simple?

What is meant by life estate?

What is meant by dower?

What is meant by curtesy?

What is meant by an estate for years?

What is a homestead?

What is a conditional estate?

What is meant by title to real estate?

From whence comes the title?

Define title by descent.

Define title by will.

Define title by involuntary alienation.

Define title by prescription.

What are public lands?

What is the United States survey?
Define a land district.
What is a principal meridian?
Define range.
Define base line.
Define township line.
Define section.
What is school land?
What is a nuisance?
What is a public nuisance?
What is a private nuisance?

CHAPTER XXXI

REAL ESTATE CONVEYANCES

697. **Deed of Conveyance.**—A deed of conveyance is an instrument, either printed or written, which transfers the title of landed property from one person to another. The deeds now used in most of the western states are much shorter and simpler than formerly, owing to statutory regulations.

The law of the state where the property is located always governs the transfer and should be consulted.

698. **Parties.**—The parties to a deed are called the *grantor* and the *grantee,* the grantor being the one who gives the deed, while the grantee is the one to whom the transfer is made.

699. **Grantor.**—Any one competent to make an ordinary contract may usually become the grantor in a deed of conveyance. He must, of course, be of legal age and sound mind.

Deeds of infants are not absolutely void, but only voidable. The infant may either annul or confirm the deed on becoming of age. If, however, the deed is regularly made by the guardian of the infant, under order of the court, the transfer will be binding.

Real estate owned by partners can be transferred only by each partner signing the deed.

700. **Grantee.**—The disabilities which attach to grantors of a deed do not apply to grantees, and while those who dispose of land must be legally competent to make a contract, any person may receive a deed to real estate.

701. **Warranty Deed.**—A warranty deed is one containing all the covenants or promises necessary to protect the grantee in the quiet and full enjoyment of the land. Such deeds contain the following covenants or declarations in some form:

1. That the grantor is lawfully seized of the land described.

2. That he has good and lawful rights to convey the same.

3. That the property is free from all incumbrances, except those mentioned in the deed.

4. That the grantee shall be protected in the quiet enjoyment of the land.

5. That the grantor will forever warrant and defend the premises against the lawful claims of any other person.

We will now briefly explain the five covenants referred to above.

702. **Covenant of Seizen.**—By this covenant the

grantor declares he is well seized of the property, meaning that he is the lawful owner of same. Should it afterwards be shown that the grantor had not a good and perfect title at the time of the transfer, this covenant would then be regarded as broken, and an action could be commenced at once against him.

703. **Right to Convey.**—A person may be lawfully seized of land, and yet have no right to convey it to another. The right to convey, therefore, means that the grantor is not only lawfully seized of the property, but that there exists no legal disability to prevent him from conveying the title to the grantee.

704. **Free from Incumbrances.**—An incumbrance is any mortgage, unpaid taxes, judgments, liens, or legal claim of any kind held by a third person against the land.

If the land conveyed is subject to a mortgage or other incumbrance, this should be fully described in the deed, and following such description should be written these words: "Which the said party of the second part assumes and agrees to pay." If these words or others equivalent thereto are not inserted the grantee will not be held personally liable for the payment of the incumbrance, although the land will, of course, be held for it.

705. **Quiet Enjoyment.**—This covenant warrants

that the grantee shall not on account of defective title be disturbed in the quiet enjoyment of the premises. This covenant is broken whenever some one with a superior title comes in and legally expels the grantee or disturbs his possession of the land described.

706. **Warrant and Defend.**—Of all the covenants in a deed of conveyance this is the most important, and in some states it is made to take the place of all the other covenants. By it the grantor binds not only himself, but also his heirs, to forever warrant and defend the grantee, his heirs, and assigns against the lawful claims of any person whomsoever.

This covenant runs with the land, and any person owning the property when the covenant is broken may at once begin an action against any of the preceding grantors.

707. **Quit-claim Deed.**—A quit-claim deed conveys whatever interest the grantor has in the land. Nothing is warranted, nothing is guaranteed, the grantor does not even say he has any interest in the land; he only says that he releases and quits-claim to the premises described.

This form of deed is used where the interest of the grantor in the property is doubtful, or where one has an apparent interest and the deed perfects the title; also in case of heirs or tenants in common, when they

wish to dispose of or disclaim any interest in the property. The quit-claim deed should contain the release of dower, and is practically the same as a warranty deed with the exception that it contains none of the covenants of warranty.

The warranty deed is, of course, much more desirable than any other form of conveyance, for, aside from the covenants to warrant, defend, etc., it conveys to the grantee any title which may afterwards be acquired by the grantor, and this is not true of the quit-claim deed, except in a few states. *Example.*—A sold you his farm, giving a warranty deed, but at the time of the sale he had not a perfect title. Later he secured a clear title, and it passed at once to you, on account of the warranty deed already given.

708. **Special Warranty Deed.**—A special warranty deed is one in which the grantor warrants some special or particular thing. It may be a warranty against a certain individual, or a certain claim, as distinguished from the general warranty of title, incumbrance, etc.

709. **The Consideration.**—It is customary in making a deed to recite the consideration for which it is given, and this is usually done by stating the amount of the purchase price. Sometimes the consideration is not money, or only a part of it is paid in money, and in

such cases the consideration is generally stated as follows: "In consideration of one dollar paid to me, the receipt of which I acknowledge, and divers other considerations," or "In consideration of one dollar to me paid, the receipt of which I acknowledge, and of the love and good will I bear to the said grantee."

As in all other contracts, the consideration for the transfer of real estate may be either *good* or *valuable*. A good consideration is based upon love, affection, or good will between near relatives, while a valuable consideration is founded upon money or something possessing value in a pecuniary sense.

710. **Release of Dower.**—It is necessary in nearly all the states that the wife join her husband in all deeds of transfer in order to give the grantee a perfect title. The deed and acknowledgement should name and describe her as the wife of the grantor. In some states it is also necessary that the deed contain a positive statement that the wife releases all her dower and homestead rights to the premises described.

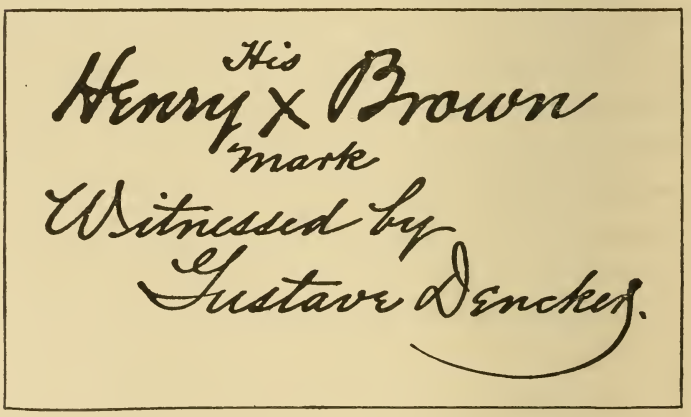
The husband may sell and give possession of the land without the knowledge and consent of his wife, but the grantee will not receive a perfect title, and upon the death of the husband the wife may assert her right of dower.

711. **Execution of Deed.**—The execution of a deed

has reference to signing, sealing, attesting, and acknowledging the instrument. It is the duty of the seller to prepare the deed in accordance with the terms of the agreement and to tender the same properly drawn to the buyer.

712. **Signing.**—The deed should be signed in ink by the grantor with his own hand, but if, for any reason, he can not write his name, it may be signed by a third party at the grantor's request and in his presence, the grantor simply making his mark. This, when properly witnessed, is equivalent to the grantor signing personally.

No. 73.—Signature by Mark, Properly Witnessed



713. **Sealing.**—The seal consists of an impression in wax or some tenacious substance, most often a piece of gummed paper about the size of a dime, on

which appears the word "seal." It is pasted at the right of the signature, and if the deed contains a number of signatures, each one must have a seal. These seals are supposed to indicate a certain solemnity or deliberation on the part of the grantor. In some states the word "seal" written with a pen or printed will answer, and in many others, especially in the West, the seal has been entirely abolished and need not be used on any documents. This private seal should not be confounded with the official seal of a notary public or other officer of the law.

714. **Attestation or Witnessing.**—The signing of a deed should, in all cases, be witnessed by some competent person. The witness should be of sufficient age and understanding, but may be a minor. He should have no interest whatever in the deed, therefore a wife can not act as a witness to a deed wherein her husband is grantee, neither can one of the partners become a witness to a deed conveying land to the firm. In most states two witnesses, and in some states three, are required.

The witness should see the deed signed, but if the grantor brings the deed already signed and asks him to witness the same, saying it is his signature, the law will recognize it as sufficient.

715. **Acknowledgment.** — An acknowledgment is

made by the grantor going before a notary public or magistrate and acknowledging the deed to be his voluntary act. The officer then fills out a certificate on the deed stating that the grantor acknowledges the execution of the instrument and to this he affixes his official signature and seal.

Generally a deed is valid as between the grantor and grantee without this acknowledgment, but it must be acknowledged in order that it may be entitled to record.

716. **Delivery.**—In order to complete the conveyance, the deed after being properly executed must be delivered by the grantor and accepted by the grantee. If the grantee should get possession of the deed by fraud or force, that would not constitute a delivery, and the grantee would not receive a good title.

A deed may be delivered conditionally, that is, it may be placed in the hands of a third person to be delivered to the grantee upon certain conditions. You might execute a deed to A and deliver the same to the bank, to be handed to Mr. A on the payment of the price agreed upon. This is called a deed in escrow (es-kro′).

717. **Recording.**—A complete record of all the land located in the county is kept at each county seat, and

deeds as well as other instruments affecting the title of land should be recorded.

This plan of recording gives a certain publicity to all transfers, and enables those interested in the title of land to investigate the same at any time.

Every properly executed and acknowledged deed is considered as recorded as soon as it is placed in the hands of the recorder, and he notes the date, hour, and minute on the deed at once.

This often proves a very important matter, for you may hold a deed to certain land given to you by A, but if A's creditors attach the land even a minute before you have your deed recorded you may lose the property.

718. **Land Contracts.**—It is often inconvenient for the purchaser of land to pay the whole price agreed upon in cash, and in that case a land contract is usually drawn up and signed by both parties.

This contract usually contains a promise on the part of the seller to furnish a complete abstract of title and a warranty deed at a certain specified time, on condition that the payments and other stipulations of the contract are faithfully carried out by the purchaser.

Sometimes the contract is drawn so as to give the buyer an option on the land, that is, he has the right

to either take the property at the time and upon the terms agreed to, or forfeit the amount paid and refuse the land. If the contract is intended as a buyer's option it is only necessary for the seller to sign the agreement.

No. 74.—Warranty Deed, Short Form, with Release of Homestead and Dower

This indenture, made this 1st day of January, in the year of our Lord One Thousand, Nine Hundred Five, between William H. Stone and Mary E. Stone, his wife, both of Grand Island, Neb., of the first part, and Charles Wilson, of Chicago, Ill., of the second part, witnesseth, that the said party of the first part, in consideration of the sum of Five Thousand Dollars ($5,000) in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents, do grant, bargain, and sell, unto the said party of the second part, his heirs, and assigns, all that piece or parcel of land situated in the County of Hall and State of Nebraska, to-wit: (here describe carefully the land or premises granted).

Together with the appurtenances thereunto belonging; and all the estate, right, title, interest, claim, and demand of the said party of the first part herein.

And the said William H. Stone and Mary E. Stone, his wife, both parties of the first part, hereby expressly waive, release, relinquish, and convey unto the said party of the second part and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatsoever in and to the above described premises, and each and every part thereof, which is given by or results from any and all laws of this state pertaining to the exemption of homesteads.

And the said William H. Stone and Mary E. Stone, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, and with his heirs and assigns, that the above bargained premises in the quiet and peaceable possession of the said party of the second part, and his heirs and assigns, the said

party of the first part shall and will warrant and forever defend.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

William H. Stone. [seal]
Mary E. Stone. [seal]

Signed, sealed, and delivered in the presence of
R. B. Doney.

State of Nebraska, } ss.
Hall County. }

I, James Markel, notary public in and for said county, do hereby certify that William H. Stone, who is personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said Mary E. Stone, wife of the said William H. Stone, having been examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing been by me fully made known and explained to her, and she also by me having been fully informed of her rights, under the homestead laws of this state, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of any and all laws of this state relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this 2d day of January, A.D. 1905.

James Markel,
[seal] *Notary Public.*

My commission expires February 10, 1906.

No. 75.—Agreement for Warranty Deed

This agreement, made this 1st day of October in the year 1902, between A. M. Hargis, of Grand Island, Neb., in the County of Hall and State of Nebraska, of the first part, and August Vogeler, in the County of Hall and State of Nebraska, of the

second part, WITNESSETH, that in consideration of the stipulations herein contained and the payments to be made as is hereinafter specified, the first party agrees to sell unto the second party the following described real estate in Howard county and State of Nebraska, to-wit: Southwest quarter of section twenty-eight (28), township thirteen (13), range ten (10), for the sum of Four Thousand Dollars, on which the said second party has paid the sum of One Thousand Dollars. And the said second party, in consideration of the premises, hereby agrees to pay to the said first party, at Grand Island, Neb., the following sums of principal and interest at the several times named below, interest being payable annually at the rate of 6 per cent per anuum, to-wit:

Oct. 1, 1903, Principal $1,000, Interest $180.

Oct. 1, 1904, Principal $1,000, Interest $120.

Oct. 1, 1905, Principal $1,000, Interest $60.

And it being mutually understood that the above premises are sold to said second party for improvment and cultivation, the said party further agrees and obligates himself, his heirs, and assigns, that all improvements placed upon said premises shall remain thereon and shall not be removed or destroyed until final payment is made for said land; and further, that he will punctually pay said sums of money above specified as each of the same becomes due; and that he will regularly and seasonably pay all taxes and assessments upon said premises for the current year of 1902 and thereafter.

In case the said party, his legal representatives, or his assigns shall pay the several sums of money aforesaid punctually, and at the several times above limited, and shall strictly and literally perform all and singular his agreements and stipulations aforesaid, after their true tenor and intent, then the first party will furnish the said second party, his heirs, or assigns (upon request of the second party at Grand Island, Neb., and the surrender of this contract), a good and sufficient Warranty Deed, free and clear of all incumbrance, except as against taxes on said lands, which said second party has agreed to pay as above set forth, and as against any and all acts done and suffered by said purchaser, or his assigns, subsequent to the date of this contract.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and times above limited, the times of payment being of the essence of this contract, and likewise to perform and complete

all and each of his agreements and stipulations aforesaid, strictly and literally, without any failure or default, then the party of the first part shall have the right to declare this contract null and void, and all rights and interests hereby created or then existing in favor of the said second party, or derived under this contract, shall utterly cease and determine, and the premises hereby contracted shall revert to and revest in said first party (without any declaration of forfeiture or act of reentry, or without any other act by said first party to be preformed, and without any right of said second party of reclamation or compensation for moneys paid or improvements made), as absolutely, fully, and perfectly as if this contract had never been made.

And it is further agreed, on the part of the purchaser, that a failure to pay any instalment of principal or interest, or a failure to keep any of the covenants and agreements herein made by him, shall work a forfeiture of all his rights, and that thereupon the first party may, if he so elects (and the purchaser hereby waives any notice of such election), treat the purchaser as a tenant holding over and at sufferance, and proceed against said purchaser by summary action of forcible entry and detainer to recover possession.

And it is further stipulated that no assignment of the premises shall be valid unless the same shall be endorsed hereon, or permanently attached hereto, and countersigned by the first party (for which purpose this contract must be sent to him by mail or otherwise), and that no agreements or conditions, or relations between the second party and his assignees, or any other person acquiring title or interest from or through heirs, shall preclude the first party from the right to convey the premises to said second party or his assigns on the surrender of this agreement and the payment of the unpaid portion of the purchase money which may be due to the first party.

In Witness of which both parties have signed these presents in duplicate on the day and year above written.

A. M. Hargis.
August Vogeler.

Witness:
W. A. Bonham.

No. 76.—Deed of Grant and Quit-claim of Property and Mining Rights, in Use in California and Other Mining States.

This Indenture Made the —— day of ——— in the year of our Lord One Thousand Nine Hundred ——, between (name, residence, and occupation of the grantor) the part— of the first part, and (name, residence, and occupation of the grantee), the part— of the second part, witnesseth, that the said part— of the first part, for and in consideration of the sum of ——— dollars, ——— of the United States of America, to —— in hand paid by the said part— of the second part, the receipt whereof is hereby acknowledged, ha— granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents do— grant, bargain, sell, remise, release, and forever quit-claim unto the said part— of the second part, and to —— heirs and assigns (here describe carefully the land or premises granted).

Together with all the dips, spurs, and angles, and also all the metals, ores, gold, and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the rents, issues, and profits thereof; and also all the estate right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part— of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said part— of the second part, —— heirs and assigns forever.

In Witness Whereof, The said part— of the first part, ha— hereunto set —— hand— and seal— the day and year first above written.

[Signatures.] [seals.]

Signed, sealed, and delivered in the presence of

———————

No. 77.—Brief Quit-Claim Deed

Know all Men by These Presents: That I, C. W. Morris, an unmarried man of the County of Pottawattamie and State of Kansas, in consideration of One Dollar in hand paid, do hereby grant, sell, remise, release, and forever quit-claim, unto Floyd Perdew, of Grand Island, Hall County, State of Nebraska, the following described real estate, situate in the County of Hall and State of Nebraska: Lot five (5), located in Block fourteen (14), in the original town, now city, of Grand Island.

Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever, of the said C. W. Morris of, in, and to the same, or any part thereof.

To Have and to Hold the above described premises, with the appurtenances, unto the said Floyd Perdew and to his heirs and assigns forever.

Signed this 10th day of February, A.D. Nineteen Hundred Two.

C. W. Morris. [seal.]
In presence of Floyd Perdew. [seal]
Otto Hartwich.

The State of Kansas, }
Pottawattamie County. } *ss.*

On this 12th day of February, A. D. Nineteen Hundred Two, before me, a notary public, in and for said county, personally came the above named C. W. Morris, an unmarried man, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and he acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the date aforesaid.

S. C. Grossnickle,
[seal.] *Notary Public.*
My commission expires June 12, 1906.

No. 78.—Contract for Sale of Land, with Penal Obligation

Articles of Agreement Made and concluded this ——— day of ———, A.D. 19—, between ——— of the County of ——— and State of ———, of the first part, and ——— of the County of—— and State of ——— of the second part, as follows:

The said (name of the party of the first part), for the con-

sideration hereinafter mentioned, does for himself and for his heirs, covenant and agree with the said (name of the party of the second part) and his heirs and assigns, by these presents, that he, the said party of the first part, shall and will, on or before the —— day of ——— A.D. 19—, at the proper costs and charges of the said party of the first part (or of the second part, if that is agreed), his heirs, and assigns, by good and lawful deed, well and sufficiently grant, convey, and assure unto the said party of the second part, his heirs and assigns, in fee simple, clear of all incumbrances, all that certain tract or parcel of land lying, being, and situated in the County of ———, State of ———, as follows, to-wit: (here describe carefully the land or premises granted).

In Consideration Whereof, The said (here the name of the party of the second part), for himself and his heirs, does covenant and agree with the said party of the first part, and with his heirs and assigns, by these presents, that he, the said party of the second part, and his heirs or some of them, shall and will, on the execution and delivery of the said deed or deeds as aforesaid, well and truly pay, or cause to be paid unto the said party of the first part, or his heirs and assigns, the sum of ——— dollars, in the manner following, to-wit: (set forth the terms and times of payment as agreed on). And upon (set forth the time agreed on) the said party of the first part shall give to the said party of the second part possession of the aforesaid premises.

And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators unto the other, his executors, administrators, and assigns, in the penal sum of ——— dollars.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

[Signatures.] [seals.]

No. 79.—Power of Attorney to Sell Land

Know All Men by These Presents: That I, the undersigned (name of the selling party), of the town (or city) of ———, County of ———, and State of ———, have this day made, constituted, and appointed, and do by these presents make, constitute, and appoint (name of attorney) of the town (or city) of ———,

in the County of ———, and State of ———, my true and lawful attorney, for me and in my name to sell and dispose of, absolutely, in fee-simple, the following described lot, tract, or parcel of land, or any part thereof, situated, lying, and being in the County of——— and State aforesaid, to-wit: (here describe carefully the land or premises granted), for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for me and in my name, and as my act and deed, to sign, execute, acknowledge, and deliver such deed or deeds and conveyance or conveyances, for the absolute sale and disposal thereof, or of any part thereof, with such cause or clauses, covenant or covenants, and agreement or agreements, to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by said attorney touching or concerning the premises.

In Testimony Whereof, I have set my hand and seal, this —— day of ———, A.D. 19—.

[Signature.] [seal.]

State of ———, }
County of ———. } *ss.*

Be it Remembered That on this —— day of ———, A.D. 19—. before the undersigned, a notary public (or other magistrate) within and for the County of ——— and the state ———, personally came (the name of the principal), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his free act and deed, for the purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and affixed my official seal, at my office in ——— the day and year first above written.

[Signature.] [seal.]

IN THE RECORDER'S OFFICE

State of ———, }
County of ———. } *ss.*

I, ———, Clerk of the Circuit Court, and ex-officio recorder of said county (or whoever else is the recording officer), do hereby certify that the within instrument of writing was, on the —— day of ———, A.D. 19—, duly filed for record in this

office, and is recorded in the records of this office in Book —— at page ——.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court, at ——— this —— day of ———, A.D. 19—.

———————————

Recorder.

Per ———————————

Deputy.

REAL ESTATE CONVEYANCES

REVIEW QUESTIONS

What is a deed of conveyance?
What are the parties called?
Who may be the grantor of a deed?
Who may be the grantee?
Define a warranty deed.
Define the covenant of seizen.
What is meant by right to convey?
What is meant by incumbrance?
What is a quit-claim deed?
Define special warranty deed.
What is the consideration of a deed?
What is meant by release of dower?
How is a deed signed by one who can not write?
What is meant by sealing?
What is meant by attesting a signature?
Who may be a witness to the signing of a deed?
What is an acknowledgment?
Who is authorized to take an acknowledgement?
What constitutes delivery?
What is meant by recording a deed?
Is it necessary to have a deed recorded?
What is a land contract?

CHAPTER XXXII

REAL ESTATE MORTGAGES

719. **Definition.**—A real estate mortgage is simply a deed of conveyance which transfers to the person mentioned therein the property described. This transfer is made as full and complete as though it were an outright sale, but an additional clause is inserted called the *defeasance clause.*

720. **Defeasance Clause.**—A mortgage is given to secure the payment of a debt, and the defeasance clause which is inserted in the instrument states that the transfer of the title shall become null and void provided the sum mentioned therein shall be paid by the mortgagor at the time specified; but in case it is not paid the transfer shall remain in full force. The person giving the mortgage is called the *mortgagor* (mor′-gāj-or) and the one receiving it is called the *mortgagee* (mor′gā-je).

721. **Equity of Redemption.**—Under the common law, if the mortgagor did not pay the debt on the exact date of maturity the legal title to the land passed at once to the mortgagee, and the mortgagor had no further rights in the matter, notwithstanding the debt

might be only a fractional part of the true value of the land.

The courts of equity held that the rule was too harsh, that it was in the nature of a penalty and worked a hardship on the mortgagor; therefore he was given the privilege of redeeming the land within a reasonable time after the debt had become due by paying the principal and interest. This right of redemption is now recognized and protected by all courts.

722. **Can Not Lose Right of Redemption.**—This right to redeem property after the debt becomes due is considered so important by the law that the mortgagor can not by any form of contract deprive himself of this privilege. Therefore, if the mortgagor agrees in the plainest and most positive terms that he shall have no right to redeem the land after default of payment, and that the mortgagee may have an absolute title to same, if the debt is not paid at maturity, still, the law will allow him his equity of redemption and set the agreement aside.

723. **Insurance Clause.**—It is customary to insert an insurance clause in real estate mortgages, which is an agreement on the part of the mortgagor to keep all buildings insured for a specified amount for the security of the mortgagee. If the mortgagor does not keep the premises insured according to contract, the

mortgagee may do so and charge the same to the mortgagor.

724. **An Interest May be Mortgaged.**—It is not necessary that a person should hold land in fee simple in order that he may mortgage the same, but he has a right to mortgage any transferable interest he may have in the property. It may be a life interest, undivided interest, an interest for a certain number of years, etc.

If a mortgagor has no interest in the land at the time of executing the instrument, but acquires a title later, it is generally held that the mortgage becomes valid as soon as the title passes to the mortgagor.

725. **Deed Intended as Mortgage.**—In case a deed is given as security for the payment of a debt, the law will regard it as a mortgage, and even though the terms of the deed are intended to grant an absolute title, the courts will treat it in every way as a mortgage.

726. **Execution.**—The manner of executing a mortgage is exactly the same as is required for a deed. It must be signed, sealed, witnessed, acknowledged, and delivered.

727. **Recording a Mortgage.**—Every mortgage should be recorded promptly as soon as it is executed. The mortgage would be binding between the original par-

ties without record, but it would be void as to subsequent *bona fide* purchasers or mortgagees.

The recorder's books are usually kept in a fireproof vault, and in case the original mortgage is lost or destroyed the owner would suffer no inconvenience or loss provided it was recorded.

728. **Mortgagor's Wife.**—The mortgagor's wife should also sign the mortgage, even though the title be held in the husband's name. The object of this is to release her dower interest, and in many states a mortgage on the homestead would be void without the signature of the wife.

729. **Purchase Money Mortgage.**—It is not absolutely necessary for the wife to join the husband in a mortgage given for the purchase money. *Example.*—Mr. A buys a farm for $3,000, paying cash $1,000 and giving a mortgage for the balance of $2,000. It would not be necessary for Mr. A's wife to sign this mortgage, although it would be better to have her do so.

730. **Sale of Mortgaged Property.**—The owner of mortgaged real estate is not prevented on that account from selling or disposing of the same, for he has a perfect right to sell it subject to the mortgage.

In giving a deed the mortgagor should be careful to describe the mortgage debt and follow it by these words, "*Which the purchaser assumes and agrees to*

pay." In that case if the property should be foreclosed and fail to sell for enough to pay the mortgage, the purchaser would be held for the balance; but if it is not desired to bind the purchaser for the deficiency in event of foreclosure, the deed should simply state that the purchaser buys "*subject to the mortgage.*"

731. **Second Mortgage.**—A mortgagor may offer his land as security for the payment of his debts as often as he can find those who will accept it, but of course each new mortgage should state the amount of encumbrance already against the property. The mortgages would have preference in their regular order.

732. **Possession of Premises.**—It is now generally understood that the mortgagee has no estate in the land, but only a lien on same for the amount due him. The mortgagor is therefore, in most of the states, entitled to possession of the property until the same has been sold according to law for the payment of the debt.

733. **Assignment of Mortgage.**—A mortgage is usually given as security for the payment of a negotiable note, and if the note is endorsed and transferred together with the mortgage, the sale will be valid. Many prefer, however, to take a regular deed of assignment (see form at end of this chapter). The validity of an

assignment of a mortgage is governed by the laws of the state where the land is located.

734. **May Sue on Notes Alone.**—The mortgagee may, upon default of payment, begin a suit of foreclosure at once; or he may, if he prefers, sue the mortgagor on the notes alone and get a personal judgment against him. Sometimes the last named method is preferable, especially if the land mortgaged has but little value and the mortgagee is a person who is financially responsible for the debt.

735. **Discharge of Mortgage.**—A mortgage is discharged by the mortgagee, or his authorized agent, or his assigns acknowledging the payment of same upon the margin of the page where it is officially recorded. This acknowledgment must be witnessed by the register of deeds or his deputy, and it will then have the same effect as a deed of release.

If it is not convenient to discharge the mortgage in this manner, a regular deed of release should be executed, acknowledged, and recorded (see form at the end of this chapter).

736. **Refusal to Discharge.**—The statutes of many states fix a severe penalty for refusal to discharge a mortgage after the same has been fully paid.

737. **Foreclosure.**—In most states if a mortgage is not paid at maturity the property may be advertised

and sold according to law, to the highest bidder. After paying costs, together with the mortgage and interest on same, the balance is turned over to the mortgagor. But in case the property does not sell for enough to pay the mortgage and costs of foreclosure, the mortgagee will, in most of the states, be allowed a judgment against the mortgagor for the deficiency.

738. **Abstract of Title.**—Any one selling or mortgaging land is generally required to give an abstract of title so the mortgagee or purchaser may satisfy himself as to the title, without being compelled to examine all the deeds, mortgages, and other instruments of record affecting the title to the land.

This abstract of title consists of a brief summary of the important parts of all instruments affecting the title, or constituting an incumbrance on the land, from the first grant down to the date of the abstract.

739. **Deed of Trust.**—A trust deed is an instrument given to a third party called a trustee, with the agreement that the property is to be held as security for the payment of certain debts. In practical effect it is about the same as a mortgage, and any one holding negotiable notes secured by a trust deed may sell the notes, and the purchaser will acquire all the rights possessed by the seller.

No. 80.—Real Estate Mortgage

Know All Men by These Presents: That I, D. A. Trivelpiece, in consideration of Five Thousand Dollars, in hand paid, do hereby grant, bargain, sell, and convey unto John W. Hargis the following described real estate, situate in the County of Douglas, State of Nebraska, to-wit:

Lot seven (7) in Block fourteen (14) original town, now city, of Omaha, together with all the appurtenances thereunto belonging; and all the rents, issues, and profits arising therefrom after default herein, and I do hereby covenant with the said John W. Hargis, his heirs, and assigns, that I am lawfully seized of said premises, that they are free from incumbrance, and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Provided, always, and these presents are upon this condition: That, whereas, said D. A. Trivelpiece has executed and delivered to said John W. Hargis his one promissory note, of which the following is a copy:

$5,000. Grand Island, Neb., January 1, 1901.

One year after date for value received I promise to pay John W. Hargis or order Five thousand and no/100 Dollars, at the office of the Grand Island Banking Co., Grand Island, Neb., with interest at 10 per cent per annum from date. The makers and endorsers severally waive presentment for payment, protest, notice of protest, and notice of nonpayment of this note.

D. A. Trivelpiece.

P. O. address, Grand Island, Neb.
Due January 1, 1902.

Now if the said D. A. Trivelpiece shall well and truly pay, or cause to be paid, the sum of money in said note mentioned, with the interest thereon according to the tenor and effect of said note, then these presents shall be null and void. But if said sum of money, or any part thereof, or any interest thereon, is not paid when the same is due, or if the taxes and assessments of every nature which are assessed and levied against said premises are not paid at the time when the same are by law made due and payable, then the whole of said sum and interest to date of such default shall immediately become due and payable, and this mortgage may be foreclosed forthwith, and the mortgagee, his heirs,

or assigns, shall have the right to have a receiver appointed at once, who shall take possession of, control, and preserve the mortgaged premises, and collect the rents, issues, and profits thereof for the payment of the mortgage debt.

Signed this 1st day of January, A.D. 1901.

D. A. TRIVELPIECE.

In presence of
EDWARD JOEHNCK.
C. F. HASSE.

STATE OF NEBRASKA, } ss.
HALL COUNTY. }

On this 1st day of January, A.D. 1901, before me, Chas. L. Lloyd, a notary public in and for said county, personally came the above named D. A. Trivelpiece, who is personally known to me to be the identical person whose name is affixed to the above instrument as grantor, and he acknowledged the instrument to be his voluntary act and deed.

WITNESS my hand and official seal the date aforesaid.

CHAS. L. LLOYD,
[SEAL.] *Notary Public.*

My commission expires February 6, 1904.

No. 81.—DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS: That I, John W. Hargis, of the County of Christian, and State of Illinois, the mortgagee named in a certain mortgage deed, given by D. A. Trivelpiece, of the County of Hall, and State of Nebraska, to said John W. Hargis to secure the payment of Five Thousand Dollars, dated January 1, 1901, and recorded in the records of the office of Douglas County, Nebraska, in book R of mortgages, page 256, in consideration of the sum of Five Thousand Dollars to me paid by Leroy Frazell, of Hall County, Nebraska, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, set over, and convey unto the said Leroy Frazell and his heirs and assigns said mortgage deed, the real estate thereby conveyed, and the promissory note, debt, and claim thereby secured, and the covenants therein contained.

TO HAVE AND TO HOLD The same to him, the said Leroy Frazell and his heirs and assigns, to his and their use forever,

subject, however, to the conditions therein contained and to redemption according to law.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal this the tenth day of July, 1901.

John W. Hargis.

Witness: Henry O. Minnis.

State of Illinois, } ss.
Christian County. }

On this, the 10th day of July, 1902, before me, a notary public in and for said county, personally came John W. Hargis, to me known to be the identical person whose name is fixed to the above release as maker, and acknowledged the execution of same to be his voluntary act and deed.

Witness my hand and seal the day and year above written.

Henry O. Minnis.

[seal.] *Notary Public.*

No. 82.—Release on Real Estate Mortgage

Know All Men by These Presents: That I, Leroy Frazell, of the County of Hall, and State of Nebraska, for and in consideration of one dollar, and other good and valuable consideration, the receipt whereof is hereby acknowledged, do remise, convey, release, and quit-claim unto D. A. Trivelpiece, of the County of Hall, and State of Nebraska, all the right, title, interest, claim, or demand whatsoever I may have acquired in, through, or by a certain mortgage deed bearing date of January 1, 1901, and recorded in recorder's office of Douglas County, State of Nebraska, in book R of mortgages, page 256, to the premises therein described as follows, to-wit: Lot seven in Block fourteen, original town, now city, of Omaha.

Together with all appurtenances and privileges thereunto belonging or appertaining.

Witness my hand and seal this tenth day of January, 1902.

Leroy Frazell.

Witness: Olive Keene.

State of Nebraska, } ss.
Hall County. }

On this, the 10th day of January, 1902, before me, a notary public in and for said county, personally came Leroy Frazell, to me known to be the identical person whose name is fixed to the

above release as maker, and acknowledged the execution of same to be his voluntary act and deed.

Witness my hand and seal the day and year above written.

ARTHUR POORE,
Notary Public.

[SEAL.]

REAL ESTATE MORTGAGES

REVIEW QUESTIONS

What is a real estate mortgage?

How does it differ from a deed of conveyance?

What is the defeasance clause?

What are the parties to a mortgage called?

What is equity of redemption?

Can a person sign away his right of redemption?

What is the insurance clause?

Who pays for the insurance?

May a person mortgage his interest if he does not own the land in fee simple?

If a person give a mortgage on land in which he has no interest, will the mortgage become valid if he afterwards acquires a title to the property?

If a deed is given as security for a debt, will the law regard it as a mortgage?

What is meant by the execution of a mortgage?

Must it be recorded?

Why is it necessary to record it?

Is it void if not recorded?

Must husband and wife both sign it?

Is it necessary for both to sign a purchase money mortgage?

May mortgaged property be sold?

May land be mortgaged when there is already a mortgage on same?

How is a mortgage discharged?

If a mortgage is paid, must the holder discharge the same?

Who has possession of the land mortgaged?

May a mortgage be sold?

May the holder of notes secured by mortgage sue on the notes alone if he prefers?

What is meant by foreclosure of mortgage?

What is an abstract of title?

What is a trust deed?

CHAPTER XXXIII

LANDLORD AND TENANT

740. **Definition.**—This chapter deals with the relations which exist between a person who owns or controls land, called the landlord, and the one who rents the land from him, called the tenant.

741. **The Parties.**—Any one who is competent to make ordinary contracts may be a party to the lease of land.

The landlord or owner is called the lessor (les′-or) and the tenant or person to whom the property is leased is called the lessee (lē-se′).

742. **What May be Leased.**—While land and the buildings thereon are by far the most frequent subjects of lease, there are other things capable of being leased, such as water rights, mining rights, oil rights, wharfage, turpentine or maple trees, etc.

743. **A Lease.**—The contract by which one person rents land, buildings, etc., of another is called a lease. It may be verbal if for one year or less, but according to the law of most of the states, if the time for which the lease is to run exceeds one year, it must be written.

The lease should be made in duplicate and each copy be signed by both the landlord and the tenant.

744. **Term of Lease.**—The term of lease has reference to the length of time for which the property is rented. This is usually a matter of agreement between the parties, although a few of the states limit the term for which a lease may be drawn. In the state of New York no lease on agricultural land is valid if drawn for more than twelve years.

In the large cities lots are often leased for one hundred years or more, the term of ninety-nine years, however, being the customary length of a long-time lease. All long time leases should be executed with the same formality and recorded the same as a deed of conveyance.

A lease for life is sometimes made, which holds good during the life of the lessee, who is called a Tenant for Life.

745. **Rent.**—This has reference to the price the tenant is to pay the landlord for the use of the property. It may be a stipulated sum payable weekly, monthly, yearly, etc.; it may be a gross sum paid in advance for the whole term of the lease; it may be a share of the crop; or it may be paid in labor or services.

746. **If Building be Destroyed.**—Some of the states

have statutes providing that in case a leased building is destroyed or rendered uninhabitable by fire or other unavoidable accident, the tenant shall not be required to pay rent during the time he is unable to use and occupy the building.

In states where this matter is not regulated by the statutes the tenant will be held for the payment of the rent during the full term of the lease, even in case the building is totally destroyed, unless it is otherwise stipulated in the lease. All well drawn leases contain clauses covering these points fully.

747. **Repairs.**—Unless it is so agreed in the lease, the landlord will not be legally bound to make any repairs whatever on the building. If the chimneys blow off, the windows get broken, and the doors fall from their hinges, or the house is wrecked by a storm, still the tenant must pay his rent and can not compel the landlord to repair the building. It is generally held, however, in case the house becomes uninhabitable by its own fault, such as general decay, crumbling walls, etc., that the tenant may abandon the same and declare the lease at an end, without any special agreement touching this point. The tenant can not do this, however, when the defect in the building is such that a reasonable investigation would have brought it to his notice when he leased the building. Repairs

which are needed to preserve the house from injury, such as damaged roof, broken windows, or skylights, etc., must be made by the tenant, although he is not bound to make general repairs.

748. **When Tenant Must Rebuild.**—If the lease states that the tenant "covenants to return and redeliver the house at the end of the term in good order and condition, reasonable wear and tear only excepted," the tenant would then be bound to rebuild the house in case it were destroyed in any manner whatever.

To relieve the tenant of this unjust responsibility the covenant may be made to read as follows: "The said tenant covenants to return and redeliver the house at the end of the term in good order and condition, reasonable wear and tear, damage or loss by fire or other unavoidable accidents excepted."

749. **Assignment of Lease.**—A tenant has the right to assign his lease, whether it be verbal or written, to another person; or, if he prefers, he may sublet any portion of the property to a third party, provided there be no covenant in the lease to the contrary. The person renting property from a tenant is called a subtenant.

In subletting the property or assigning the lease, the tenant can not release himself from his obligations to the landlord for the payment of the rent;

neither is the landlord obliged to allow the subtenant to occupy the premises if it is to be used for any purpose foreign to, and inconsistent with, the original lease.

750. **Clause Against Subletting.**—Landlords generally prefer to choose their own tenants, and well drawn leases usually contain a clause or covenant stating that no part of the premises shall be sublet and no assignment of the lease shall be valid. Notwithstanding this agreement, it is generally held that the tenant may sublet the premises or assign the lease without forfeiting the property. He will of course be held personally responsible for the rent, and will also be liable for any damages sustained by the landlord on account of the change.

To the above named covenant should be added another one stipulating that the contract shall become void in case any part of the property be sublet or the lease be assigned. In that event the landlord may enter the premises and turn out the tenant in case the covenant is broken, or, if he prefers, he may hold the tenant for the rent and any damages he has sustained, but he can not do both.

751. **Sale of Leased Property.**—When a lease is given on unencumbered property the tenant acquires thereby a certain estate or right in it which he can

not be deprived of. The owner may sell or mortgage the premises at his pleasure, but the buyer or mortgagee will take it subject to the tenant's rights, and he may retain possession until the expiration of his lease.

752. **Lease of Mortgaged Property.**—If the premises be mortgaged at the time the lease is drawn, the mortgagee has certain rights over the tenant, and in case the property is sold under foreclosure to satisfy the mortgage, the lease will then become void and the purchaser may take immediate possession.

If this were otherwise, a dishonest landlord could execute a long time lease just before the land was sold, and by making the rent very low, could collect several years in advance. This would, of course, be a great injustice to the mortgagee.

753. **Fixtures.**—Any chattel or personal property which is so fixed or fastened to land or buildings that it can not be removed without material injury to itself or the real estate is called a fixture.

When a tenant has made improvements of this character on leased property it is very important to know whether or not he has the right to remove the same.

754. **What May be Removed.**—It is impossible to formulate a rule which will hold in every case, as much

depends upon the peculiar circumstances and the intention of the parties.

Among the things which have been held as removable are the following articles: gas fixtures, pumps, counters, shelving, stables on blocks, and furnaces.

755. **Things Not Removable.**—Much sometimes depends upon the manner in which the article is attached to the real estate. If it is nailed this may indicate an intention of making it a permanent fixture, while if fastened on with screws it may evince an intention to remove the same.

Among the articles held as not removable are the following: barn fastened to the ground, trees, plants and hedges not belonging to a gardener, glass windows, locks and keys.

756. **A Tenant's Fixtures.**—When a tenant makes permanent improvements without the knowledge or consent of the landlord, they can not as a rule be taken away, but the law is much more favorable to a tenant regarding the removal of fixtures than it is to the grantor of a deed.

It has been held that improvements made by a tenant may be taken away in case the premises are left in as good order as they would have been had he not removed them.

A tenant for a certain term must remove his fix-

tures before his lease expires, for otherwise they become the property of the landlord.

In case the tenancy comes to an end suddenly without fault of the tenant he will have a reasonable time in which to remove his property.

757. **Waste.**—This has reference to any important and permanent injury done to the property, such as the unnecessary destruction of growing timber, removing fences, taking out doors, windows, etc., from buildings, or in fact doing anything to seriously injure the property.

In case a tenant is guilty of waste, the landlord is entitled to damages or may bring an action to restrain him from further destruction of the property.

758. **Right and Duties of Tenant.**—The tenant of a room or suite of rooms is entitled, without express agreement, to the use and free access to all appurtenances and accommodations which naturally go with same, such as use of front door, hall ways, windows, lavatory, pump, etc.

The rent must be paid according to agreement, and the property must be redelivered to the landlord according to lease.

The tenant is not liable for the payment of taxes or insurance unless it is stipulated in the agreement.

If a lease to a farm be terminated by any event

which the tenant could neither foresee nor control, he is entitled to the crop which he planted before the lease became void.

To avoid the possibility of a misunderstanding, it is always best to include in the lease everything of any importance which is agreed upon.

759. **Notice to Quit.**—Under certain circumstances a tenant is entitled to a notice to quit the premises before he can be legally ejected.

If the property has been rented for a specified time the tenant is not entitled to notice for the landlord has a right to possession immediately on the expiration of the lease. But if he holds over and occupies the premises by consent of the landlord, he becomes a tenant at will, that is, a tenant at the will of the landlord. A tenant of this class can not leave, neither can he be turned out, without proper notice.

This notice must be written and must specify the particular day when the tenant is to quit.

The time when such notice should be given is very important. The statutes on this point are not uniform, but usually the tenant is entitled to one month's notice if he pays the rent monthly; one week's notice if he pays weekly, etc.

The notice must request him to leave on the day the rent is due.

If a tenant fails to pay his rent then, it is necessary to notify him only a short time before you expect him to get out, usually fourteen days, but this notice must specify the exact day the tenant is to quit.

A tenant may give notice of his intention to quit, and it is generally subject to the same rules as mentioned above.

760. **Eviction of Tenant.**—Actual eviction has to do with the forcible expulsion of the tenant from the premises by the owner of the property or his agent.

Constructive eviction has reference to the wilful disturbance of the tenant's possession by making the house uninhabitable. For example, if a tenant refuses to pay rent or get out the landlord may remove all doors and windows, or otherwise make the place untenable, and thus compel the occupant to remove. This would be constructive eviction.

No. 83.—Ordinary Lease with Provision for Abatement of Rent

This Indenture, Made this 3d day of January, 1902, between Harry Sparling, party of the first part, and Clyde Sampson, party of the second part,

Witnesseth, That the said party of the first part, in consideration of the covenants of the said party of the second part, hereinafter set forth, do by these presents lease to the said party of the second part the following described property, to-wit:

The two-story brick building located on Lot eight (8), Block twenty-nine (29), original town, now city, of Grand Island, Hall County, Nebraska, the same to be used by the said Clyde Sampson as a warehouse and store-room for the purpose of conducting a wholesale and retail Dry Goods Store.

To Have and to Hold The same to the said party of second part from the 1st day of February, 1902, to the 1st day of February, 1903. And the said party of the second part, in consideration of the leasing of the premises as above set forth, covenants and agrees with the party of the first part to pay to the said party of the first part, as rent for the same, the sum of Six Hundred and no/100 Dollars, payable as follows, to-wit: Fifty dollars ($50) on the 1st day of February, 1902, and Fifty Dollars ($50) on the first day of each month thereafter during the life of this lease.

The said party of the second part further covenants with the said party of the first part that at the expiration of the time mentioned in this lease peaceable possession of the said premises shall be given to the said party of the first part, in as good condition as they now are, the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may, at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer; the said party of the second part hereby waiving any notice of such election or any demand for the possession of said premises.

And it is Further Covenanted and Agreed Between the parties aforesaid that in case the premises or any part thereof shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injuries sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use and habitation by the said lessor, or these presents shall thereby be determined and ended at the election of the said lessor or his legal representative.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness the hands and seals of the parties aforesaid.

Harry Sparling [seal.]
Clyde Sampson. [seal.]

In presence of
Annetta Erickson.

STATE OF NEBRASKA, }
HALL COUNTY. } *ss.*

On this 2d day of January, A.D. 1902, before me, a notary public duly commissioned and qualified for and residing in said county, personally came Harry Sparling, the said lessor, and Clyde Sampson, the said lessee, to me known to be the identical persons whose names are affixed to the foregoing instrument as lessor and lessee, and acknowledged the said instrument to be their voluntary act and deed.

WITNESS my hand and seal the day and year last above written.

LLOYD YOCUM.
[SEAL.] *Notary Public.*

My commission expires March 4, 1906.

No. 84.—CLAUSE FOR TENANT TO PAY TAXES

(May be inserted in lease if desired.)

It is further agreed that the said party of the second part, his executors, administrators, or assigns shall and will, at their own proper costs and charges, bear, pay, and discharge all such taxes, duties, water rents, and assessments whatsoever as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.

No. 85.—CLAUSE AGAINST ASSIGNMENT.

(May be inserted in lease if desired.)

And it is further agreed that the said party of the second part shall not assign or lease, nor underlet the whole or any part of the premises herein described to any person or persons, without the written consent of the said party of the first part, and in case the said party of the second part assign this lease or sublets the premises in violation of this agreement the party of the first part may at his election declare this lease at an end.

No. 86.—FORM FOR SURETY TO SIGN AND ATTACH THE LEASE

In consideration of the letting of the premises above described, and for the sum of one dollar, I do hereby become surety for the punctual payment of the rent and performance of the covenants in the above written agreement mentioned, to be paid and performed by said Clyde Sampson, and if any default shall be made therein I do hereby promise and agree to pay unto said Harry

Sparling such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of said agreement without requiring any notice of nonpayment or proof of demand being made. Given under my hand and seal this second day of January, 1902.

ALBERT IMM.

WITNESS: ALMA REWINKLE.

No. 87.—LANDLORD'S NOTICE TO QUIT FOR NON-PAYMENT OF RENT

GRAND ISLAND, NEB., July 1, 1902.

STATE OF NEBRASKA, } ss.
HALL COUNTY. }

To Clyde Sampson:

You being in possession of the following described premises, the two-story brick building located on Lot eight (8), Block twenty-nine (29), city of Grand Island, Nebraska, which you occupy as my tenant, are hereby notified to quit and deliver up to me the premises aforesaid, in fourteen days from this date, according to law, your rent being due and unpaid. Hereof fail not, or I shall take a due course of law to eject you from the same.

HARRY SPARLING.

WITNESS: ROSS KEARNS.

No. 88.—LANDLORD'S NOTICE TO LEAVE AT END OF THE TERM

To Clyde Sampson:

SIR—Being in the possession of a certain building with the appurtenances, situated on Lot eight, Block twenty-nine, city of Grand Island, Neb., which said premises were demised to you by me for a certain term, to-wit, from the 1st day of February, A.D. 1902, until the 1st day of February, A.D. 1903, and which said term will terminate and expire on the day and year last aforesaid, I hereby give you notice that it is my desire to have again and repossess the said building, with the appurtenances, and I therefore do hereby require you to leave the same upon the expiration of the said herein-before-mentioned term.

WITNESS my hand this 10th day of November, city of Grand Island, A.D. 1902.

HARRY SPARLING.

WITNESS: W. H. ELLISON.

No. 89—Landlord's Notice to Determine a Tenancy at Will

Grand Island, Neb., March 15, 1903.

State of Nebraska, }
Hall County. } *ss.*

To Clyde Sampson:

You being in possession of the following described premises, Lot eight, Block twenty-nine, city of Grand Island, Neb., which you occupy as my tenant at will, are hereby notified to quit and deliver up to me the premises aforesaid on May 1, 1903, according to law, it being my intention to determine your tenancy at will. Hereof fail not, or I shall take a due course of law to eject you from the same.

Harry Sparling.

Witness: Howard Ellison.

LANDLORD AND TENANT

REVIEW QUESTIONS

Define landlord.

Define tenant.

What are the parties to a lease called?

May anything besides lands and buildings be leased?

What is a lease?

Is a verbal lease binding?

How many copies of the lease should be made?

What is meant by the Term of Lease?

What is the object of a long-time lease?

What is a lease for life?

What is rent?

How may it be paid?

Is the tenant held for rent if the building be destroyed?

Is the landlord bound to make repairs?

Is the tenant bound for the payment of rent if the house is in bad condition?

May the tenant abandon the lease if the house is uninhabitable?

Must the tenant make any repairs at his own expense?

Is the tenant bound to rebuild if the house burns?

May a lease be assigned?

Does the assignment release the tenant from his obligation to pay the rent?

Must the subtenant use the building for the same general purpose named in the lease?

May the tenant sublet the property against the will of the landlord?

May leased property be sold or mortgaged by the owner?

If leased property be sold does the lease become void?

If land is sold under foreclosure, does any lease there may be on the land become void?

What rights has a tenant to a suite of rooms?

Must the tenant pay the taxes?

If a farm lease is unexpectedly terminated by no fault of the tenant, is he entitled to the crops already planted?

What is a notice to quit?

When should notice be sent to the tenant?

Must tenant send the landlord notice if he intends to quit?

What is waste?

What is actual eviction?

What is constructive eviction?

Define fixtures.

What improvements may a tenant remove?

What improvements may he not remove?

When must the tenant remove his fixtures?

CHAPTER XXXIV

WILLS

761. **Definition.**—A will is an instrument by which a person directs what shall be done with his property after his death.

762. **Parties.**—If a man makes a will he is called the testator (tes-tā′-tor). If a woman makes a will she is called the testatrix (tes-tā′-triks). The one who receives real estate by the will is called a devisee (de-vi-zē′), but any one receiving personal property is called a legatee (leg-ā-tee′), or the recipient of property of any kind by a will is sometimes called a donee (do-nē′). The person appointed to execute the will, that is, to see that its provisions are carried into effect, is called the executor (eg-zek′-ū-tor).

763. **Who May be a Donee.**—While every one can not make a will bequeathing his property to another, any person may be the donee of a will. Even persons who are incapable of making legal contracts, such as infants or persons of unsound mind, may be legatees or devisees of a will.

764. **Power to Make Wills.**—Every person of legal age and sound mind who owns real property or any interest therein descendable to his heirs may devise

and dispose of same by his last will and testament, provided all his lawful debts are first paid. While under the common law married women could not make wills, the statutes of nearly all the states have now granted them that right.

765. **Unwritten Wills.**—Unwritten or nuncupative (nun-kū′-pā-tive) wills are recognized in many of the states under certain extraordinary circumstances and also when made by soldiers and seamen in actual service. They must in every case be witnessed by two or more disinterested persons, and reduced to writing within a few days, usually six, after the will is made. It must be proved that the testator did bid the persons present, or some of them, to bear witness that such was his will.

Unwritten wills are discouraged as far as possible, as they open such an inviting field for fraud.

766. **Witnesses.**—Most states require two persons to sign as witnesses to the execution of a will, but some states require three. Great care should be taken when possible to select disinterested witnesses of high standing and well known character, for their evidence may be of the utmost importance in case the will is contested. Any one of sufficient understanding may, however, be a witness, even though he be a minor. The will should be signed by the testator in the presence of

all the witnesses. He should then declare it to be his last will and testament, and each witness should, in the presence of the testator and the other witnesses, sign his name to the document. Any alteration or erasures in the will should be referred to by the witnesses in their attestation. No one who is in any way interested in the estate, such as donee or executor, should sign the will as witnesses, for it might have the effect of invalidating the will, or at least that part of it wherein the witness is made one of the donees.

767. **Testator Chooses Donees.**—Any one possessing property in his own right may, in most of the states, will the same to one entirely outside of the family if he prefers to do so, or he may bequeath it to institutions of charity if he be so inclined.

The wife can not be deprived of her dower right by will, and usually may choose between the will and the dower, which the law provides for her.

Some states require the testator to mention each of his children in the will, but he may, if he prefers, follow the grim humor of a crusty old bachelor who, after making a number of charitable bequests in his will, remarked, "I remember all my cousins, aunts, and uncles, but give them nothing."

768. **Prospective Devise.**—A prospective devise is one where the testator devises land which he does not own

at the time of making the will, but which he acquires at a later date. This may generally be accomplished by inserting in the will the following words: "The lands that I now have, or may have at the time of my death."

769. **Codicils.**—A codicil (kod'-i-sil) is a supplement or addition to a will explaining, adding to, or altering its provisions. The codicil is made by the testator and becomes a part of the will.

Codicils to a will should be drawn with great care, and words like the following or those of similar import should be used: "I hereby expressly confirm my former will dated ———— excepting so far as the disposition of my property is changed by this codicil."

If, after making the will, money is advanced to any of the donees, it should be stated in a codicil whether such advances are to be deducted from the amount bequeathed such donees, and if with interest, etc.

770. **May be Several Codicils.**—There can be but one will, but there may be any number of codicils. If properly drawn they do not weaken the will, and in some cases may strengthen it.

It is always advisable to write them on the same sheet with the will, or to attach them to the same, but this is not absolutely necessary, so long as they refer to

it in such a manner that there can be no doubt as to the intention of the testator.

Each codicil must be executed and witnessed in the same manner as the original will.

771. **Revoking a Will.**—A testator may revoke his will in many ways. He may at any time destroy it by burning, tearing, or canceling it. He may dispose of the property which the will was intended to bequeath. He may add a codicil substituting other donees for those mentioned in the will, or it may, in some cases, be revoked by marriage of the testator.

To tear off the signature of the testator would generally destroy the will, but the question as to who tore off the signature might arise; therefore it is best to destroy the document.

If the will has been deposited with some one, or if for any reason it is not within reach of the testator and therefore can not be destroyed, it can be revoked by making a new one.

772. **Depositing of Will.**—The testator may retain his will in his own possession, or, if he prefers, he may enclose the same in a sealed envelope on which is written his name and address, and deposit it with the judge of probate of the county where he resides. The judge will give him a certificate of deposit and safely keep the will.

773. **Delivery and Opening of Will.**—Wills deposited with the judge of probate are not delivered to any one except the testator himself, during his lifetime, unless it be upon a written order from the testator duly proved by the oath of the subscribing witness.

After the death of the testator and at the first probate court after the notice thereof, it shall be publicly opened by the judge of probate and be retained by him.

Should a will be in the possession of any person other than the judge of probate, he should deliver it to the probate court having jurisdiction of the case at once upon the death of the testator.

774. **The Executor.**—The executor (eg-zek′-ū-tor) of a will is the person named by the testator to carry out the provisions of his last will and testament. He is required to give bond for the faithful performance of his duties, unless it be stipulated in the will to the contrary. A woman appointed to execute a will is called an executrix (eg-zek′-ū-triks).

775. **Duties of Executor.**—It is the duty of the executor to carry out the provisions of the will as far as possible. He should collect all the money due to the estate and pay all debts of the testator. The balance should then be disposed of as directed by the will. Too much stress can not be placed upon the im-

portance of keeping an exact and complete record of every transaction, whether it be large or small, and detailed reports should be made to the court occasionally.

The executor can not be held for the payment of the testator's debts, except to the extent of the estate involved, unless he gives his written agreement to become personally responsible for same.

776. **Probate of Will.**—Probating a will consists in producing satisfactory evidence before the judge of probate to show that the will offered is the last will and testament of the person therein named as testator.

If no person appears to contest the probate of the will at the time appointed, and the proof of the validity of the will is satisfactory to the judge, he will admit it to probate and direct that it be recorded.

777. **Contesting a Will.**—If the genuineness or validity of the will is open to question, any interested party may contest the same. A contest is usually based upon one of the following claims:

1. That it was forged.
2. That it was revoked.
3. That it was not executed according to law.
4. That it was procured by force or fraud or misrepresentation.

5. That the testator was incompetent on account of mental disability.

778. **Provision Against Contesting.**—Sometimes the maker of a will inserts a clause to the effect that any donee who contests the validity of the will shall be disinherited and therefore receive nothing whatever, and the courts have upheld such provisions. If, however, the contest proves successful, and the will be set aside, the provision of disinheritance would be of no force or effect.

779. **Letters Testamentary.**—When a will has been duly proved and allowed the judge of probate issues to the executor of the will a document called letters testamentary (tes-ta-men′-ta-ri).

These letters recite that the will has been probated according to law, that the executor has been sworn to the faithful performance of his duty, and that he is authorized to proceed at once to carry out the provisions of the will.

780. **Removal of Executor.**—If an executor shall neglect his duty or refuse to settle the estate according to law, or to perform any decree of the court, or abscond, or become insane, or otherwise incapable of discharging the trust, the judge may revoke the letters testamentary and remove the executor.

781. **Corporations as Donees.**—Commercial corpora-

tions, such as banks, railroad companies, etc., can not generally be the recipients of property by a will; but eleemosynary (el-ē-mos′-i-nā-ri) or charitable corporations, such as hospitals, schools, colleges, etc., supported by public or private donations, are allowed by a provision in their charters to receive gifts and bequests.

782. **Law of Place.**—The local statutes should be carefully consulted by those who are especially interested, and all bequests of personal property should conform strictly to the law of the state in which the testator resides, even when the property is located in another state.

In devising real property, the will should be in accord with the laws of the state in which the land is located.

783. **Wills of Minors.**—Wills made by minors are not generally valid, but the law of some of the states permits a minor who has reached the age of sixteen to dispose of his personal property by will.

A will made by a minor may be affirmed by a codicil after he becomes of age, and it will then be recognized by the courts as binding.

No. 90.—Form of Will

I, William A. Hammond, of the city of Grand Island, County of Hall, and State of Nebraska, being of sound and disposing mind and memory, do hereby make public and declare this to be my last will and testament, hereby revoking all former wills by me at any time made.

1st—I direct my executrix, hereinafter named, to pay all my just debts and funeral expenses.

2d—I give and bequeath unto my son, George H. Hammond, fifty shares of the capital stock of the First National Bank of Grand Island, Nebraska, which now stand to my credit on the books of said bank.

3d—I give and bequeath unto my daughter, Mary S. Hammond, Five Thousand Dollars in United States, four per cent, government bonds. These bonds are now owned by me and are deposited in the safety vault of the Grand Island Banking Company.

4th—I give and bequeath unto my brother, William, and to my sister, Bertha, each the sum of Five Hundred Dollars.

5th—All the rest and residue of my property, real, personal, and mixed, wheresoever situated, which I now own or may hereafter acquire, and which I die seized or possessed of, I give, devise, and bequeath, absolutely and in fee simple, to my wife, Jennie C. Hammond, her heirs, and assigns forever.

I hereby constitute and appoint my said wife, Jennie C. Hammond, executrix of this, my last will and testament, and request that my executrix be not required to give bonds for the performance of her duty as such.

Witness my hand this 1st day of January, A.D. 1902.

William A. Hammond.

Signed, published and declared by the above named testator, William A. Hammond, as and for his last will and testament, in the presence of the undersigned, who in his presence and at his request, and in the presence of each other, have signed our names as subscribing witnesses hereto, believing him, at the time of such signing, to be of sound and disposing mind and memory.

Abraham Ulry, 315 East Sixth St., Grand Island, Neb.

William Crawford, 210 West Fifth St., Grand Island, Neb.

George B. Mason, 902 West Tenth St., Grand Island, Neb.

784. **By Operation of Law.**—Any person who dies without making a will is said to be an intestate (in-tes′-tāt), and all property owned by such a person is distributed among his relatives according to the law of the state in which he resided. This is called distribution by operation of law.

785. **Administrator.**—An administrator is a man appointed by the court to settle the estate of a deceased person when no will has been made. If a will was made and no executor was appointed, or having been appointed, refuses or is unable to act, then an administrator is appointed "with the will annexed." If a woman is appointed to this position, she is called an administratrix (ad-min-is-tra′-triks).

786. **Who Entitled to Appointment.**—It is generally recognized that the husband of a deceased wife or the wife of a deceased husband, or the next of kin, has the right to be appointed administrator.

Should the person naturally entitled to the appointment not wish to act, or be unsuitable, or incompetent, the court may appoint some one else, according to the statutory provisions.

787. **Personal Property Only.**—An administrator is supposed to act as the personal representative of the deceased, discharging his debts, collecting the obligations due to him, and carrying out his contracts.

His operations are confined to personal property, except in cases where the sale of part or all of the real estate is necessary for the payment of the debts of the deceased, and even then the administrator can not dispose of any of the realty belonging to the estate without an order from a court of competent authority.

788. **Real Estate.**—All real property belonging to the estate which is not sold by order of the court descends to the lawful heirs of the deceased without any action on the part of the administrator.

789. **Inventory.**—The administrator is required by law to make a true inventory of all real estate, goods, chattels, rights, credits, etc., belonging to the estate of the deceased. This inventory must be filed with the judge of probate, and in settling up the estate all the items must be accounted for.

790. **Administrator's Fees.**—The fees paid to the administrator are regulated by the local statutes. In Nebraska they are five per centum on the first $1,000 collected; two and one-half per centum for all above that sum, and not exceeding five thousand dollars; and one per centum for all above five thousand dollars.

The same fees are allowed to an executor of a will in case no compensation is provided for in the will itself.

791. **Under Direction of the Court.**—The power of an

administrator is confined to the authority given him by the probate court. He acts under the directions of the judge and is constantly advised and directed by him. He must make reports to the court from time to time, until the final settlement of the estate.

792. **Insolvent Estate.**—If the debts of the deceased are greater than the estate, the administrator should report this fact at once to the court, and follow the requirements of the law prescribed by the state for dealing with insolvent estates of deceased persons.

793. **Order of Payment.**—If an estate is insolvent and all debts can not be paid, they are usually given preference in the following order:

1st. Necessary expenses of the probate court.

2d. Necessary funeral expenses.

3d. Expenses of last sickness.

4th. Debts due to the United States.

5th. Debts due the state where the deceased resided.

6th. Debts due to other creditors.

WILLS

REVIEW QUESTIONS

Define a will.

Who is a testatrix, testator, devisee, legatee?

Who may be a donee?

Who may be a testator?

Are unwritten wills valid?

Must they be reduced to writing?

How many witnesses are required to a will?

Who may be a witness?

May the testator will all the property away from his family?

Can the wife be deprived of her dower right?

Define a prospective devise.

Define a codicil.

Should the codicil be attached to the will?

How may a will be revoked?

Where are wills usually deposited?

If a testator deposits his will with the probate judge, will it be returned to him at his request?

Who is an executor?

Mention some of his duties.

Is he liable for the debts of the estate?

What is meant by probating a will?

On what grounds may a will be contested?

What method is sometimes used to prevent a will from being contested?

What are letters testamentary?

May an executor be removed by the court?

May corporations receive property by will?

In devising land should the testator follow the laws of the state where he lives, or those of the state in which the land is located?

What is the rule in bequests of personal property?

Are minors capable of making wills?

Define distribution of property by operation of law.

Who is an intestate?

Who is an administrator?

Who is entitled to be appointed administrator?

Has the administrator charge of the real estate of the deceased?

Is it necessary to make an inventory of the property?

In what manner is the administrator paid for his work?

Does he work under the direction of the court?

What is an insolvent estate?

In what order are the claims paid?

CHAPTER XXXV

GUARDIANS AND WARDS

794. This chapter is taken from the laws of Nebraska, and will be found applicable to nearly all the states.

795. **Minor.**—A minor is a person of either sex who has not attained to the age required by law for the performance of certain acts; therefore in the eye of the law he is regarded as an infant.

The age prescribed in most of the states is twenty-one for males and eighteen for females, but in Nebraska if a girl marries between sixteen and eighteen her minority ends.

796. **Guardians.**—A guardian (gär'-dian) is a person appointed by the court to whom is intrusted the person, or property, or both, of another, called the ward.

797. **Appointment.**—If the minor be under the age of fourteen years, the court of probate may appoint his guardian, but if he be above that age, he has the right, himself, to select some suitable person, and the court will appoint him.

798. **Parents.**—Parents are the natural guardians of their minor children, and they are equally entitled to

their custody and to the supervision of their education. If either father or mother dies or becomes disqualified for acting as guardian, the guardianship devolves upon the other.

799. **Duties of Guardian.**—The guardian usually has charge of the ward, together with the care and management of his estate. His position is that of a trustee, and he has the power to dispose of the personal property in any manner he believes to be in the interest of his ward, but is held to a strict responsibility for careful management.

He may lease real estate belonging to the ward, but he can not sell it without an order from the court of competent authority.

800. **Guardian's Bond.**—Guardians are usually required to give a bond in such sum as the court may order, with conditions as follows:

1st. To make a true inventory of all real and personal property belonging to the ward and file the same with the court.

2d. To faithfully discharge his trust as guardian and to manage the estate according to law and for the best interests of the ward.

3d. To render a full account within one year, and thereafter when requested by the court, of all the property belonging to the ward's estate.

4th. At the expiration of his trust to promptly settle and deliver over to the ward or his representative all property, money, etc., which he is lawfully entitled to.

801. **Expenses of Minors.**—If any minor who has a father living has property of his own, the income of which is sufficient for his maintenance and education in a manner more expensive than such father can reasonably afford, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable and as shall be directed by the court.

802. **Guardian Appointed by Will.**—The surviving parent may by will appoint some suitable person as guardian for the minor children, and if the testator requests that the guardian be not required to give bond, such request will be respected unless, on account of changed conditions or for sufficient cause, the court shall think it proper to require one.

803. **Examination of Insane Person.**—When the relations or friends of any insane person, or of any person who by reason of extreme old age, or other cause, is mentally incompetent to have charge or management of his property, shall apply to the court of probate to have a guardian appointed for him, the court

shall cause a notice to be given to the supposed insane or incompetent person at least fourteen days before the time appointed for the hearing.

804. **Guardian for an Insane Person.**—If, after a careful examination and full hearing, the court shall be satisfied that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate.

805. **Guardian of Spendthrift.**—When any person, by excessive drinking, or gaming, or idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or family to danger of want, any officer having charge of the poor of the county, or any justice of the peace of the county, may present a complaint to the court of probate, setting forth the facts and praying that a guardian be appointed for him.

Ten days' notice of a hearing shall be given the supposed spendthrift, and if the court is convinced that the conditions are as stated, a guardian will be appointed.

806. **Penalty for Neglect.**—Any guardian who shall neglect to properly feed and clothe, or who shall in any way abuse his ward, shall, upon conviction thereof, be fined not exceeding $100, or imprisoned in the county jail not exceeding sixty days, or both.

807. **Compensation of Guardian.**—Every guardian shall be allowed the amount of his reasonable expenses incurred while performing his duties, and shall also have such compensation for his services as the court shall deem to be just and reasonable.

GUARDIANS AND WARDS

REVIEW QUESTIONS

Who is a minor? Who is a ward?

At what age does a person reach his majority?

Who is a guardian? How is the guardian appointed?

Does the guardian have charge of the estate of the ward?

At what age does the minor have the right to select his guardian?

Are the parents the natural guardians?

If the father or mother should die, does the other become guardian?

Name some of the duties of a guardian.

Has he full charge of the ward's personal property?

Has he full charge of the ward's real estate?

Does the guardian give a bond?

May a guardian be appointed by will?

Is a guardian ever appointed for an insane person?

Is a guardian ever appointed for a spendthrift?

What is the penalty if a guardian neglects or abuses his ward? How is the guardian paid?

CHAPTER XXXVI

BANKS AND BANKING

808. A bank is an institution whose business consists in receiving deposits, loaning money, discounting notes, paying checks, buying and selling exchange, making collections, etc. Originally banks were used merely as places for the safe-keeping of money, bullion, jewels, or other valuables. Under this system, the depositor had to pay for the privilege of leaving his property in the bank, and the money or bullion thus deposited remained idle and unproductive in the bank vaults until the owner called for it.

In more modern times, however, with the improved methods of doing business, banking has been reduced to a science, and money deposited in these institutions is not withdrawn from circulation, but loaned out again, much to the benefit of society in general.

809. **Of Ancient Origin.**—Banks are of very ancient origin. The Chinese are said to have records of bank bills issued as early as 2697 B.C., and Babylonian tablets are exhibited at the Metropolitan Museum of Art in New York bearing records of banking transactions of the date of 601 B.C. during the reign of Nebuchadnezzar.

The Jews of Lombardy are thought to have been the first to make a business of banking; but their operations along this line were of a very primitive character. The work of each was done in the open market place on a modest banco or bench, and from the word banco we get our word bank. When a banker failed, his bench was broken to pieces by the populace, and he was called a bankrupt. Banco meaning bank, and ruptere meaning to break.

810. **The Bank of Venice.**—The bank of Venice was established in 1171 A.D., and to the results of its experience may be attributed our modern system of banking. The Republic being greatly embarrassed, each citizen was compelled to loan the government, through this bank, 1 per centum of his possessions. This money could not be withdrawn from the bank, but the certificates could be transferred at the pleasure of the holders. These certificates were usually at a premium over the current coins, which were, as a rule, worn and clipped so as to be under the standard weight, and the government, finding the plan so popular, kept reducing the rate of interest until no interest whatever was paid.

811. **Bank of England.**—The Bank of England was established July 27, 1694, with a capital of nearly $6,000,000 and is to-day conceded to be the greatest

financial institution in the world. The capital has been increased to $80,000,000, and its influence is now felt in every civilized land.

It not only does a general banking business, but it is employed as agent to transact for the government all business of a financial character. Its notes are issued in denominations of £5 to £1,000 for any sum, when bullion is deposited in its vaults in exchange for same.

These notes are legal tender everywhere in England except at the bank itself, and they are never paid out the second time, but are canceled as soon as they are presented, and new bills take their places.

812. **Bank of North America.**—There was little need of banks during the colonial period, and they were almost unknown in this country before the Revolutionary War. While numerous attempts at banking were made in a private way, the first authorized and successful bank in the United States was established at Philadelphia on December 31, 1781, and known as the Bank of North America. Its chief promoter was Robert Morris, at that time Superintendent of Finance, who submitted a plan to Congress for the establishment of the bank, and recommended that the government subscribe for 633 shares of $400 each.

His plan and recommendations were adopted. It was a success from the first, and this bank rendered valuable aid to the United States government at a period when financial help was sorely needed. It also did much toward establishing public confidence, and in that way aided wonderfully in promoting the commercial interests of the country. It is worthy of note that this bank is still in existence and in a thriving condition.

813. **The Bank of the United States.**—Under the leadership of Alexander Hamilton, then Secretary of the Treasury, the Bank of the United States was incorporated on February 25, 1791, in the city of Philadelphia. The capital stock was limited to $10,000,000, the United States government subscribing the sum of $2,000,000 under the right reserved in the charter.

Branch offices were established in eight of the chief commercial cities, and the notes of the bank were legal tender for all debts due in the United States. The bank was well managed, but when the charter expired in 1811 Congress refused to renew it. About $7,000,000 of the stock was held by foreigners, and this seemed to be the principal objection to the renewal of the charter. The dissolution of this bank gave a great impulse to the establishment of local banks in all parts of the country.

814. **The Second Bank of the United States.**—It was now thought that enormous profits could be made in the banking business, and local state banks multiplied so rapidly and issued such quantities of circulating notes that the situation became alarming. The war of 1812 was now in progress, and in 1814 when the news came that the British had taken Washington the shock was too much for the banks, and most of them suspended specie payment.

This disaster caused Congress to again take up the question of organizing a national bank in which the government should retain a controling interest. The result was that the Second Bank of the United States was incorporated April 10, 1816, with a capital of $35,000,000, the government taking $7,000,000 of same. The fight against the renewal of the charter of this bank was made the principal issue of the presidential election, when Andrew Jackson conducted his memorable campaign in opposition to the bank.

Henry Clay as candidate of the National Republican party stood for the renewal of the charter, while Jackson as candidate of the Democratic party opposed it, claiming that it placed a great power in the hands of a few men which could be used to influence elections and dominate private business; that the exclu-

sive privileges which it enjoyed were a species of favoritism, etc. Jackson was elected by an overwhelming majority.

815. **Wildcat Banks.**—From 1833 to 1837, while President Jackson was engaged in his great contest with the United States Bank, many state banks were organized throughout the country.

They were allowed to issue bank notes to circulate as money for an amount equal to their alleged capital stock, but many of them had little or no specie with which to redeem their notes. The security they put up with the state for the redemption of these notes consisted of bonds issued by states, counties, cities, private corporations, and even private mortgages on real estate, many of which were worthless or of uncertain value.

A favorite scheme for these wildcat bankers was to go into a distant part of the country and buy land with their worthless money, then sell it at once for good money, hoping the bills would not soon find their way back to the bank for payment.

816. **The End of State Bank Circulation.**—In 1861 the circulation of this country was issued by sixteen hundred of these state banks organized under the laws of thirty-four different states.

This wholesale issuing of paper money, a part of

which was valueless and the remainder questionable, soon drove gold and silver out of general circulation, but, bad as the system was, it continued until the outbreak of the Rebellion in 1861, when many of the banks collapsed and most of those remaining were later converted into national banks.

On March 3, 1865, an act was passed by Congress imposing a tax of 10 per cent on all notes issued by any person or state bank to be used and circulated as money. This had the effect of taxing the state bank circulation out of existence.

817. **History of Banking.**—A volume might easily be written on the history of banks and banking, but we have only touched a few of the landmarks, and dropped a few hints that the student may have some idea of the beginning and development of the banking business in this country.

818. **Benefit to Society.**—Banks are very important factors in the commercial enterprise of modern times. Indeed, it would be almost impossible to get along under the present system of doing business without the facilities afforded by the banking houses of to-day. The banks receive deposits in any amount, whether great or small, and thus provide a safe place for the keeping of money. The most important benefit, however, is the opportunity which they afford

business men and others for borrowing money, when their own capital is tied up in merchandise or accounts. The small sums left with the bank by the numerous depositors grow into a large fund, and while this money would be idle and useless in the pockets of the owners, it gives a wonderful impetus to business when loaned out by the bank to manufacturers, feeders, merchants, builders, etc.

819. **Moral Influence.**—During the reign of "wildcat banking" the business naturally fell into bad repute and came to be regarded by most people as nothing more than a legalized system of wholesale robbery. The feeling was so bitter against the banks that many were opposed to allowing them to exist in any form, and in Michigan they went so far as to amend the constitution excluding them from the state.

The situation is now reversed, and every one recognizes the importance of good banking facilities. In fact, the banking business as at present conducted by the careful, conservative institutions of this country exerts a strong influence for good upon the morals of society.

From motives of self-interest a banker is compelled to carefully investigate the moral character of his borrower. He must know whether he is honest or

dishonest, whether upright or trickey, whether economical or extravagant, whether conservative or speculative, whether idle or industrious, for a banker prefers to loan money to a poor man who is honest and industrious rather than a wealthy man who is a trickster.

The favorable opinion of a banker often aids a young man in many other ways. If he applies for a position or tries to buy goods on credit, the local bank is frequently consulted as to his standing, even though he has not given the bank as a reference. Thus we see that a careful, conscientious banker, on account of the position he holds in a community, does much to promote commercial honor and becomes to some extent a conservator of good morals.

820. **Kinds of Banks.**—Banks are divided as to their organization into three classes, viz., national banks, state banks, and private banks.

The three great banks already mentioned, viz., the Bank of North America, the First Bank of the United States, the Second Bank of the United States, were distinctively government institutions. They were incorporated by special act of Congress, and the government, being a large stockholder and patron, directed their policy to a great extent.

The government has no financial interest in the

national banks of to-day, and they are in fact only private corporations under the supervision of an official of the national government, instead of the state.

821. **National Banks.**—All national banks must be organized in strict conformity to the National Bank Act passed by Congress June 3, 1864, many of the leading features of which are noticed in the following pages under the heading "Organization, etc., of National Banks."

National banks are allowed to issue circulating notes according to the terms of the act, but they must purchase in the market, United States government bonds, which are to be deposited with the government as a guaranty that their circulating notes will be redeemed on demand.

822. **State Banks.**—State banks are organized in accordance with the laws of the various states in about the same manner as other commercial corporations, and are generally under the control of the state banking board.

The strong objection formerly urged against state banks was that the system of allowing them to issue circulating notes was defective. In many cases they were permitted to deposit worthless bonds or mortgages with the state as security for the redemption

of their notes, and in case of failure the holders of these notes had to bear the loss.

This was a serious objection, but it was entirely swept away on March 3, 1865, when Congress passed a law laying a 10 per cent tax on the circulation of state banks. This amounted to an absolute prohibition, and state banks have not since that time issued notes for circulation.

The change has been highly beneficial to the public as well as to the banks. They now do a thriving business and take a place along with national banks in conservative management and public confidence.

823. **Private Banks.**—A private bank is one conducted by an individual or a firm and is not incorporated.

The kind of business and the manner of transacting it is practically the same in private, state, and national banks, the only material difference being that national banks issue circulating notes and the others do not.

A private banker must depend upon his reputation for honesty and trustworthiness, as well as his ability and wealth, to gain and hold the confidence of his patrons.

ORGANIZATION, ETC., OF NATIONAL BANKS

The information and hints given in the remainder of this chapter were gathered principally from the National Bank Act passed June 3, 1864, and from suggestions furnished by the Controller of the Currency.

824. **The Object.**—The object of the National Bank Act was two-fold: first, it was hoped that it would place the currency of the country upon a safe and uniform basis; second, it was expected that it would afford a market for the sale of a great quantity of government bonds.

The expenses of the war had been enormous, and the government, having exhausted every other resource, was still in pressing need of money; therefore compelling every bank to purchase bonds to be used as security for its circulation afforded a sure means of bringing millions into the treasury.

825. **Controller of Currency.**—One of the provisions of the act creates a currency bureau in the department of the treasury and provides for the appointment of the Controller of Currency as its chief officer.

He is appointed by the President for a term of five years at an annual salary of $5,000, and is charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds.

826. **Preliminary Application.**—The first thing to be done in organizing a national bank is to make a written application to the Controller of the Currency stating the desired title, the location, and proposed capital. This application should be signed by at least five persons who expect to take stock in the bank. It should also contain a statement as to the business and financial standing of the applicants and be endorsed by a United States senator, representative, or some other prominent person.

If the application is approved by the Controller he will furnish all necessary blanks for completing the organization. The following letter of application would meet all the requirements:

No. 90.—Application to Organize

Grand Island, Neb., September 1, 1903.

To the Controller of the Currency, Washington, D. C.:

Sir—Notice is hereby given that we, the undersigned, being natural persons and of lawful age, intend, with others, to organize a national banking association under the title of "The Second National Bank of Grand Island," to be located in Grand Island, county of Hall, state of Nebraska, with a capital of $100,000.

In order that we may effect such organization we request that proper blank forms be sent to Charles W. Morris, at Grand Island, Neb., and if the title selected shall be approved, that it be reserved for a period of sixty days.

NAMES	RESIDENCES
Charles W. Morris,	Grand Island, Nebraska.
Everett M. Williams,	Ord, Nebraska.
Frank E. Slusser,	Wood River, Nebraska.
David H. Hull,	Central City, Nebraska.
Jesse C. Davis,	Grand Island, Nebraska.

On the back of this application should be given the business in which each applicant is engaged, together with an estimate of his financial strength. It should then be forwarded to some senator or representative for his endorsement.

827. **Articles of Association.**—Upon receiving a favorable reply to the application, the persons interested should enter into articles of association. The articles should specify in general terms the object for which the association is formed and may contain any other provision for the regulation of its business not contrary to or inconsistent with law.

828. **Number of Persons.**—These articles must be signed by at least five persons uniting to form the association, and a greater number may sign if it is desired.

A copy of the articles must be forwarded to the Controller of Currency to be filed in his office, and the following form is recommended with such modifications as may be required.

No. 91.—Form for Articles of Association

For the purpose of organizing an association to carry on the business of banking, under the laws of the United States, the undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of association:

First—The name and title of this association shall be "The Second National Bank of Grand Island."

Second—The place where its banking house or office shall be

located and its operations of discount and deposit carried on and its general business conducted shall be Grand Island, Nebraska.

Third—The board of directors shall consist of five shareholders. The first meeting of the shareholders for the election of directors shall be held at the office of Charles W. Morris on the 10th day of September, 1903, or at such other place and time as a majority of the undersigned shareholders may direct.

Fourth—The regular annual meetings of the shareholders for the election of directors shall be held at the banking house of this association on the second Tuesday of January of each year: but if no election shall be held on that day, it may be held on any other day according to the provisions of sec. 5149 of the Revised Statutes of the United States, and all elections shall be held according to such regulations as may be prescribed by the board of directors, not inconsistent with the provisions of the national banking law and of these articles.

Fifth—The capital stock of this association shall be one hundred thousand dollars, to be divided into shares of one hundred dollars each; but the capital may, with the approval of the Controller of the Currency, be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of an act of Congress approved May 1, 1886; and in case of the increase of the capital of the association each shareholder shall have the privilege of subscribing for such numbers of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth—The board of directors, a majority of whom shall be a quorum to do business, shall elect one of its members president of this association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director. The directors shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause, to perform all acts and duties pertaining to the office of president, except such as the president only is authorized by law to perform, and to elect or appoint a cashier, and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and continue them in office or to dismiss them as, in the opinion

of a majority of the board, the interests of the association may demand.

The directors shall have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to make all by-laws that it may be proper for them to make, not inconsistent with law, for the general regulation of the business of the association and the management of its affairs, and generally to do and perform all acts that it may be legal for a board of directors to do and perform under the revised statutes aforesaid.

Seventh—This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth—These articles of association may be changed or amended at any time by shareholders owning a majority of the stock of the association, in any manner not inconsistent with law; and the board of directors or any three shareholders may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city, or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In witness whereof we have hereunto set our hands this 10th day of September, 1903.

Charles W. Morris,	Grand Island, Nebraska.
Jesse C. Davis,	Grand Island, Nebraska.
Everett M. Williams,	Ord, Nebraska.
Frank E. Slusser,	Wood River, Nebraska.
David H. Hull,	Central City, Nebraska.

I certify that the articles of association of the Second National Bank of Grand Island are executed in duplicate; that one of the instruments so executed is the foregoing; and that the other, in all respects like the foregoing, is on file with said bank.

September 10, 1903.

Everett M. Williams,
Cashier.

829. **Certificate of Organization.**—An organization certificate must also be executed and signed by all the persons signing the articles of association. This certificate should give specific information as follows:

First—The name assumed.

Second—Proposed location of the bank.

Third—Amount of capital and number of shares.

Fourth—Name, residence, and number of shares owned by each shareholder.

Fifth—That the signers wish to avail themselves of the advantages of the National Bank Act.

830. **Certificate of Officers.**—This is an affidavit made by the president, cashier, and a majority of the directors that they have complied with all the requirements of the law in organizing the association.

A copy of the certificate of organization, as well as the certificate of the officers, must be sent with the articles of association to the Controller at Washington, D. C.

831. **Must be Natural Persons.**—Persons uniting to organize a national bank must be natural persons, that is, individuals who can legally hold and control property in their own individual right, and not corporations or associations of any kind.

832. **Capital Required.**—The amount of capital required for organizing a national bank depends upon

the population of the city in which the bank is located. If the population is less than 3,000 the minimum capital is $25,000; if it is from 3,000 to 6,000 the minimum capital is $50,000; of from 6,000 to 50,000 population, the capital must be $100,000; if the population is over 50,000 the capital must be $200,000 or more.

833. **Shares of Stock.**—The capital stock of each national bank shall be divided into shares of $100 each and be transferable on the books of the bank as prescribed in its by-laws. Every person becoming a shareholder by transfer shall succeed to all rights and liabilities of the prior holder of such shares.

The liability of each stockholder is double the amount of his shares, therefore if Mr. A owns stock in a national bank amounting to $5,000 he would, in case the bank failed, not only lose the entire amount invested, but would be liable for the payment of $5,000 more.

834. **Payment of Stock.**—At least 50 per cent of the capital stock of every association must be paid in before it shall be authorized to commence business, and the balance may be paid in five equal monthly installments. No certificate of stock should be issued until the shareholder has fully paid for his shares.

835. **Directors.**—The management of a national bank is intrusted to a board of directors consisting of five members who are chosen from among the stockholders.

Each one must own at least ten shares of stock in the bank, such stock not being hypothecated or in any way pledged as security for a loan or debt, and in case a director, after being elected, disposes of his stock he loses at once his right to act as a member of the board.

No one can become a director who is not a citizen of the United States, and at least three-fourths of the members of the board must have resided in the state or territory in which the bank is located for one year or more preceding their election, and must be residents therein during their continuance in office.

836. **Election of Directors.**—In electing directors and in deciding all questions coming before a meeting of stockholders, each person is entitled to one vote on each share of stock held by him. If a shareholder can not be present personally he may vote by proxy duly authorized in writing. No officer, clerk, or other person connected with, or employed in the bank can act as proxy, and no shareholder who is delinquent in the payments on his shares is entitled to vote.

837. **Cumulative Voting.**—Cumulative voting, which is allowed by the laws of several states, is not permissible in national banks. To illustrate, if Mr. A owns ten shares of stock, and five directors are to be elected, under the cumulative method he could cast ten votes for each of five candidates, or fifty votes for one candidate; but under the ordinary method he is entitled only to cast ten votes for each.

838. **Deposit of Bonds.**—National banks are required to deposit with the United States Treasurer, United States registered interest-bearing bonds as security for the redemption of the circulating notes issued by the bank.

If the bank's capital is $150,000 or under, it must deposit at least one-fourth the amount of its capital in bonds, and if its capital exceeds $150,000, not less than $50,000 in bonds must be deposited. These bonds may be purchased in the market and they must be assigned to the United States treasurer.

The bank is entitled to the interest on the bonds deposited, and the Treasurer remits the same by check as soon as it is due.

839. **Circulating Notes.**—A national bank is entitled to circulating notes equal to the par value of the bonds deposited, which must not exceed the amount of its capital stock. The act of March 14, 1900, im-

poses an annual tax of one-half of 1 per cent upon the average amount of notes in circulation which are secured by two per cent bonds issued under the provisions of the act. Circulating notes secured by all other classes of bonds are subject to an annual tax of 1 per cent.

National banks are not compelled to issue circulating notes, but in any event the bonds must be deposited as above described.

840. **Denomination and Expense of Notes.**—The government bears the expense of the paper and printing of the circulating notes furnished to national banks, but the banks themselves pay for the engraving.

The notes are now issued in denominations of $5, $10, $20, $50, and $100, but a bank is not allowed to have more than one-third of its circulation in the denomination of $5.

When the notes are signed by the president and cashier of the bank, they circulate freely as money.

841. **Controller's Certificate.**—If, after careful examination of all the facts in the case, the Controller is satisfied that the law has been fully complied with, he shall execute and send to the bank a certificate authorizing it to begin business.

842. **Redemption Fund.**—Every national bank shall at all times keep on deposit with the treasury of the

United States a sum equal to 5 per cent of its circulation, to be held and used for the redemption of its circulating notes.

All notes of national banks worn, defaced, mutilated, or otherwise unfit for circulation shall, when received by any assistant treasurer or any designated depositary of the United States, be forwarded to the Treasurer of the United States for redemption. They are then destroyed and new notes sent to the bank issuing them.

843. Reserve.—All national banks located in Chicago, New York, or St. Louis must keep on hand at all times 25 per cent of their entire deposits. These are known as central reserve cities, and any city may be placed in that list upon request of three-fourths of its banks, provided it has a population of 200,000 or more.

National banks located in reserve cities must keep a reserve of 25 per cent, but one-half of this may consist of deposits with other banks in central reserve cities. Any city of 50,000 population may become a reserve city upon request of three-fourths of its banks.

National banks not located in reserve cities must keep a 15 per cent reserve, and three-fifths of same may be deposited in reserve city banks.

The 5 per cent redemption fund deposited with the

United States Treasurer is counted as a part of the reserve in all cases.

844. **Real Estate.**—A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First—Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second—Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third—Such as shall be conveyed to it in satisfaction of debts previously contracted.

Fourth—Such as shall be purchased at sales under judgments, or mortgages held by the bank, or shall be purchased to secure debts due it.

No bank shall hold any real estate longer than five years except that which is used in transacting its own business.

845. **Examiner.**—The Controller appoints the examiners of national banks, who have the power to make thorough examinations into all the affairs of the association and question any of the officers or agents of the bank under oath.

He makes a full report to the Controller after each examination.

846. **Use of "National."**—Only such associations

as are organized under the National Bank Act are permitted to use the word "National" as a part of their corporate names. A penalty of $50 is provided for each day this offense is repeated.

847. **Extension of Existence.**—The law provides that all national banks organized shall have the right to continue for a period of twenty years from the date of their organization certificate, but if application is made to the Controller, permission will be given for an extension of the corporate existence.

HINTS TO PATRONS OF A BANK

1. Make your deposit as early in the day as convenient, as there is usually a rush near the hour of closing.

2. Don't try to hand in your deposit out of your regular turn.

3. When possible, always count your money, endorse your drafts, make out your deposit ticket, and arrange your deposit before going to the bank.

4. Never hand your money in for deposit until you have arranged the bills all one way and right side up.

5. Do not try to mislead your banker as to your financial condition, for in the end it will injure you in his opinion.

6. Avoid extended conversation with the clerks.

7. Never give checks except out of your own check book if it can be avoided.

8. Never date a check ahead with the understanding that it is not to be presented until a certain date.

9. Always consider a check paid as soon as issued, and deduct it from your balance.

10. Keep your check stubs carefully written up, so you can tell at a glance the exact amount you have in the bank.

11. Don't send ignorant or stupid messengers to the bank to transact your business.

12. In all your dealings with your banker treat him with courtesy and candor.

13. Don't commit the folly of saying you will guarantee the payment of a paper you have already endorsed.

14. All papers should be endorsed on the back across the left end. Any other way will mark you as inexperienced. If, however, the first endorsement should be on the wrong end all the rest should follow.

15. Don't think that a bank must continually renew or extend your note because you insist that it is "perfectly good." The very fact that you can not pay it at maturity shows that it is not "perfectly good."

16. Never test the generosity of your bank by trying to overdraw your account.

17. Never send your check out of the city for more than your balance, expecting to make it good before it is presented. Sometimes the telephone or telegraph wires are used in such cases.

18. Don't exchange checks with any one. Your bank will know of it sooner than you imagine, and it may injure your credit.

848. **Cashing Your Own Check.**—It often happens that a depositor will have occasion to go to the bank and personally draw the money on his own check. This is usually done by making the check payable to the order of "Cash." The drawer may, of course, make it payable to his own name, but in that case he will be required to endorse it.

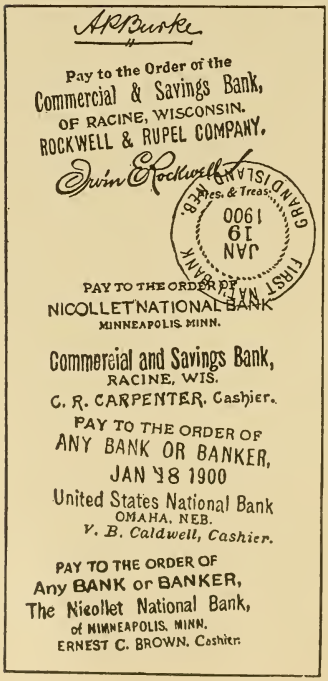
If the check is for the purchase of a draft, make it payable to "New York draft"; if it is to pay your note make it to "bills payable," etc.

849. **Checks Presented After Death.**—After a bank has knowledge of the death of one of its depositors, it is expected to refuse the payment of his checks, even though they were properly executed while the depositor was living. It may often happen, however, that the bank will not receive information of the death of a customer for some time after his demise, and in

that case it will not assume any liability in paying checks which are properly drawn and endorsed.

850. **Number Checks.**—Every depositor who issues checks should have the same carefully numbered so as to correspond with the number on his check stubs. This makes it much easier to verify his account at the end of the month. The check stub should be carefully filled out every time a check is given so that the depositor may know at a glance the balance he has in the bank.

No. 92.—Back of Wandering Check



851. **Wandering Checks.**—Checks which are sent to a distant point often pass through the hands of many institutions before reaching the bank on which they are drawn.

We present herewith an engraving showing the back of a check on the Grand Island Banking Co., of Grand Island, Neb., sent to A. P. Burke of Racine, Wis. It will be seen by the endorsements that Mr. Burke cashed the

check with Rockwell and Rupel Co., of Racine, Wis. This firm deposited it with the Commercial and Savings Bank of its own city, which forwarded it to its correspondent, the Nicollet National Bank, of Minneapolis, and it in turn sent it to the United States National Bank of Omaha. The Omaha bank sent the check to the First National Bank of Grand Island, and it took the same to the Grand Island Banking Co., where it was paid and charged to the account of the drawer.

852. **Kiting Checks.**—Sometimes a person who is embarrassed on account of lack of funds resorts to the expedient of exchanging checks with a friend. In this way he can cash his friend's check at once and will have until the next day to get the money to make his own check good, or if his friend lives in another part of the country a week's time may be gained in this manner.

This is called "kiting," and the practice of it is not regarded legitimate business; therefore one who follows this method will suffer in the opinion of his banker and may be requested to withdraw his account.

853. **Bank Statement.**—A bank statement is simply a balance sheet showing in brief form all the resources and liabilities of the institution.

National banks are required to make a report five times each year to the Controller of Currency, the

same to be published in a newspaper in the locality where the bank is established. State banks must in like manner make reports to the State Banking Board according to the local statute.

These statements are always required for a certain date that is past, and they must be sworn to and attested by at least two of the directors of the bank.

854. **Examine the Statement.**—While much may be learned concerning a bank from a careful examination of its statement, comparatively little information as to its real character can be gotten from a single report. A large surplus and undivided profits ordinarily indicate a prosperous condition, but the real strength or weakness of a bank depends upon the item called "Loans and Discounts." This item represents all the loans made by the bank, and on the quality of these loans hinges the security of the institution.

A better idea of a bank may be had by comparing its successive statements. If they show a decrease in the surplus and undivided profits, this would indicate that the earnings of the bank do not equal the expenses, losses, and dividends.

855. **Source of Profit.**—Banks make a small profit from selling exchange, collecting notes, drafts, interest on mortgages, bonds, etc., but their principal source of gain comes from loaning the money which

is deposited in the banks, and in discounting commercial paper.

The bank's outlay consists chiefly of interest paid to depositors, salaries, taxes, rent, stationery, postage, and other office expenses.

856. **Is Banking Profitable?**—Contrary to general belief, banking is not a highly profitable business, and when the amount of capital required is taken into consideration it does not compare favorably in profits with many lines of merchandising and manufacturing.

If a bank is wisely and carefully managed it will generally prove a safe investment, but it requires much time, tact, discretion, and the soundest business judgment to make it yield more than a very moderate profit.

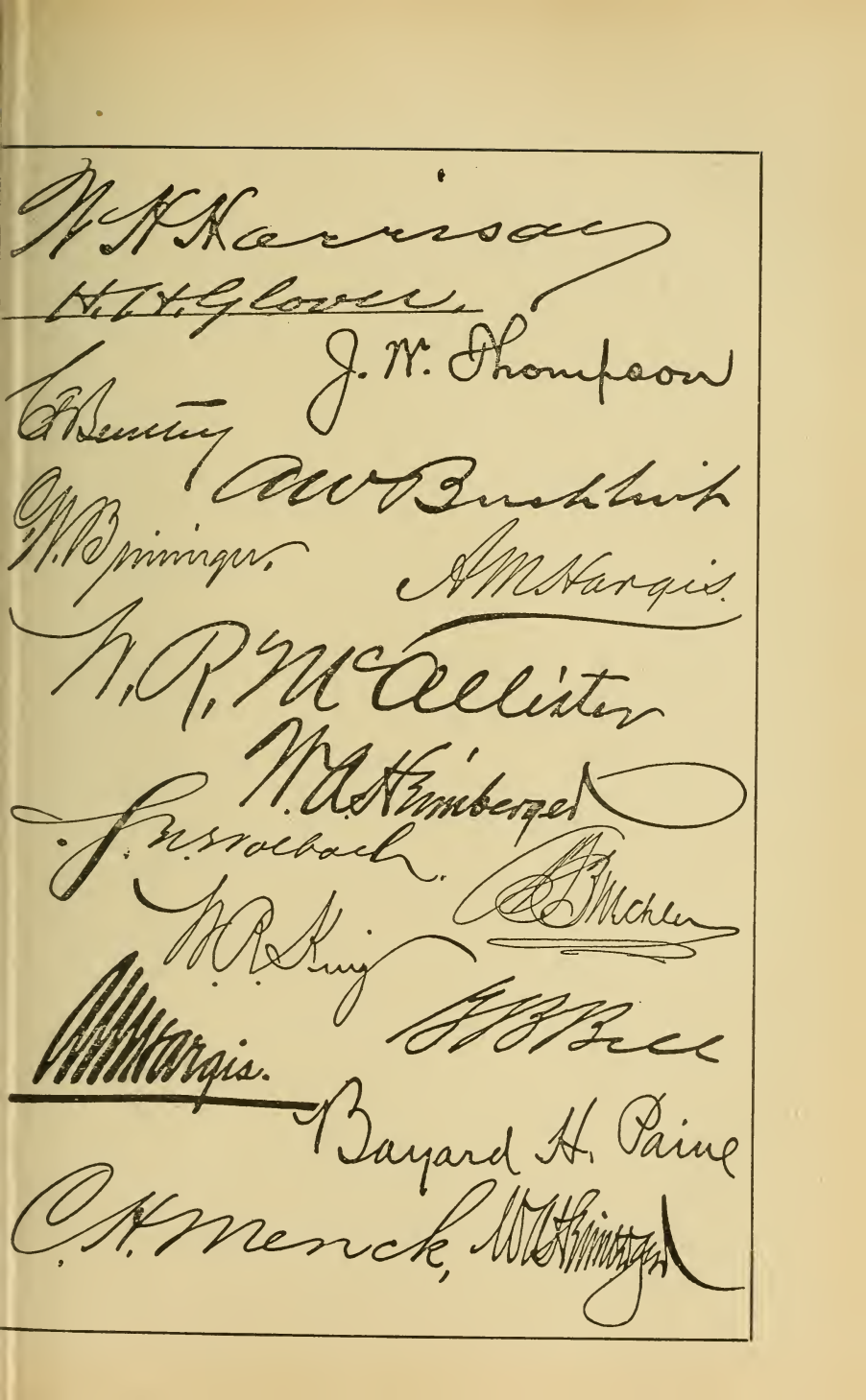
857 **Deposits.**—If a bank hopes to be successful it must have large deposits, for in most cases it could earn no more than running expenses by lending its own capital stock. These deposits may come from individual firms or corporations, or from other bankers who are located in smaller cities.

If a bank has deposits amounting to $300,000 there will of course be a large sum drawn out each day, but if one person draws out money another will make a deposit, so the balance will not vary more than one-thirtieth part of the whole from day to day. It

would therefore be perfectly safe for the bank to loan out 80 per cent of the regular deposits, or $240,000. It would no doubt be difficult to keep the whole amount loaned out all the time, and the average for the year would perhaps not exceed $180,000. When it is remembered that interest is paid on much of this deposit, and that the expenses of the bank require the income from the capital stock, it will be seen that the dividends must of necessity be small.

858. **Opening an Account.**—Banks do not as a rule care to open accounts with strangers, and it would be best if you are unknown at the bank to take some one along who can introduce you to the cashier.

859. **Signature Book.**—If everything is satisfactory, you will be required to write your name in the signature book, and in doing this you should use the same style of signature you expect to employ in signing all your checks. Opposite your name the cashier enters your address, occupation, and name of the person by whom you were introduced. Many banks require you to place your signature also on a card which is kept in an alphabetically arranged case for easy reference. If an account is to be opened by a partnership or firm, and more than one person is to have the right to draw checks, a signature must be given in the handwriting of each one who has authority to sign the checks.



Every person should adopt one style of writing his name and adhere strictly to it. He should aim at a plain, simple style that can be easily written and easily read.

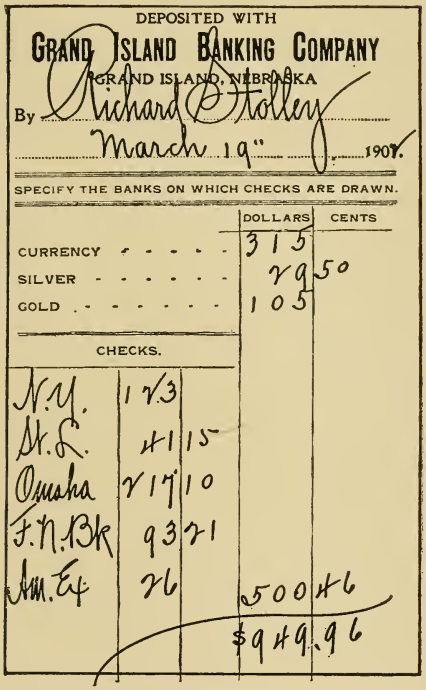
We give herewith a page of excellent signatures by a few Grand Island business men. They are not presented as models of fine penmanship, but are given as good, every-day business signatures which show the individuality of the writers.

A business man's signature soon becomes as familiar in a community as his face, and one always imagines that he can see a reflection of the writer's well known characteristics in the style of his penmanship.

860. **Checks and Deposit Tickets.**—Banks furnish to their customers blank checks, deposit tickets, and pass book without cost. Regular depositors should carefully fill out their deposit tickets before going to the bank. All checks or drafts should be listed separately, giving name of bank on which each local check is drawn, and the name of the city on which all outside checks are drawn. For correct form of drawing check and fuller discussion of same see page 115.

861. **Pass Book.**—Your pass book is the only receipt you have for the money you have deposited in the bank, and it should be handed in with each de-

No. 94.—Form of Deposit Ticket.


DEPOSITED WITH
GRAND ISLAND BANKING COMPANY
GRAND ISLAND, NEBRASKA
By Richard O'Malley
March 19" 1907.
SPECIFY THE BANKS ON WHICH CHECKS ARE DRAWN.

	DOLLARS	CENTS
CURRENCY	315	
SILVER	29	50
GOLD	105	

CHECKS.

N.Y.	173		
St. L.	41	15	
Omaha	171	10	
F.N.Bk	93	71	
Am. Ex	26		500 46
			$949.96

posit so the amount may be entered in it.

If you make a deposit at any time when you have not your pass book with you, fill out two deposit tickets and the teller will sign one of them, mark it "duplicate," and return the same to you as a receipt.

At the last of each month you should hand in your pass book to have it balanced, and in a few days it will be returned to you with all your canceled checks.

BANKS AND BANKING

REVIEW QUESTIONS

What is the principal business of a bank?

What were they originally intended for?

Are banks of ancient origin?

Who were the first to practice banking?

What method did the Bank of Venice inaugurate?

Describe the Bank of England.

What was the first authorized bank in the United States?

Was the government interested in the Bank of North America?

Is it still in existence?

Describe the Bank of the United States.

Who was the chief promoter of this bank?

What interest had the government in it?

Why was its charter not renewed?

What effect did its dissolution have upon the banking business?

Describe the Second Bank of the United States.

How were the state banks affected by the news that Washington was taken by the British?

Was the government interested in the Second Bank of the United States?

Why was its charter not renewed?

Who were the principal contestants in the great bank war?

Define wildcat banks.

How were their notes secured?

When and how was the state bank circulation driven out?

Mention some of the commercial benefits which society derives from the establishment of banks.

What of the moral influence of banks?

Into what three classes are banks divided as to their organization?

Define a national bank.

Define a state bank.

Define a private bank.

Is one class stronger or safer than another?

What was the object of the National Bank Act?

What are the duties of the Controller of Currency?

What is the first step necessary in organizing a national bank?

What are articles of association?

How many people are required to organize a national bank?

What is a certificate of organization?

What is a certificate of officers?

May corporations or associations assist in organizing a national bank?

What amount of capital is required?

What is the amount of each share?

What is the liability of shareowners?

When may the stock be paid for?

Who are the directors?

Who may become a director?

How do the shareholders vote?

May they vote by proxy, and who may act as proxy?

Is cumulative voting allowed?

For what reason are national banks required to deposit bonds with the United States Treasurer?

Does the bank receive the interest on same?

Is the bank given circulating notes equal to the face value of the bonds?

Are the circulating notes taxed?

In what denominations are these notes issued?

What is the Controller's certificate?

For what purpose is a redemption fund deposited with Treasurer?

What is done with old or damaged notes?

What is meant by the bank's reserve?

What reserve is required of banks in central reserve cities?

What reserve is required of banks in reserve cities?

What reserve is required of banks not located in reserve cities?

For what purposes are national banks allowed to hold real estate?

Who is a bank examiner?

May state or private banks use the word "National" in their titles?

May a national bank secure an extension of its corporate existence?

When do you make a check payable to "cash" or "draft"?

Are checks paid after the death of the drawer?

Why are checks numbered?

What is meant by kiting checks?

What is a bank statement and how often are they made?

Can you tell anything of the bank's strength by its published statements?

What are the sources of profit in banking?

Is banking profitable?

CHAPTER XXXVII

THE LAW OF PATENTS

862. **Patent.**—A patent is a grant by a government to the author of a new and useful invention, or to his assigns, of the exclusive right to manufacture and sell the thing invented for a specified number of years.

863. **What May be Patented.**—The Revised Statutes of the United States, sec. 4886, describes what may be patented in the following language: "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."

864. **May Employ Attorney.**—While the applicant for a patent may, if he prefers, conduct the correspondence and handle the business personally, it will gen-

erally be found more satisfactory and secure better results if a skilful patent attorney be employed.

865. **Must be Accurate.**—The greatest care should be exercised to see that the description of the invention be clear and accurate, as the right to surrender and reissue a patent on account of defects of this character has, by recent decision, been greatly limited.

866. **The Commissioner of Patents.**—All correspondence and communications of any kind intended for the patent office must be addressed to the "Commissioner of Patents." If addressed to any other officer, they will generally be returned to the writer.

867. **Power of Attorney.**—If an attorney be employed to secure the patent, the patent office will conduct the correspondence with him, provided a power of attorney be given him by the inventor or applicant. This power of attorney must be filed with the Commissioner of Patents.

When the matter has been placed in the hands of an attorney, the applicant's direct communication with the patent office ceases, as the office will not generally carry on a correspondence with two different parties regarding the same patent.

868. **Attendance Not Necessary.**—It is not necessary for the applicant or inventor to go personally to the patent office, but all the business may be con-

ducted by correspondence. Care should be exercised to see that postage, express charges, or freight be fully prepaid on everything sent to the Commissioner of Patents, for otherwise it will be refused by him.

869. **Death of Inventor.**—In case of the death of the inventor, his administrator or legal representative may make application and secure the patent.

870. **Patent Office Open to Inventor.**—The patent office with its models and records is open to the inspection of the inventor or his attorney, and an applicant is often surprised upon investigation to find that one or more patents have already been granted on inventions similar, and perhaps better than his own.

871. **Caveat.**—A caveat (kā'vē-at) is a notice filed in the patent office by one who is engaged upon an invention. This entitles the inventor to notice of any application for a patent for an interfering invention during the year while he is perfecting his own.

872. **Secrecy of Caveat and Application.**—Absolute secrecy is observed by the officials in charge of the patent office on all matters pertaining to caveats, applications for patents, applications for the reissue of patents, etc.; but after the patent has been granted, the specifications, models, and all papers relating thereto may be freely inspected, and copies of any of

the documents will be furnished to any person interested.

873. **Assignment of Patents.** —If the whole interest in an invention or patent be properly assigned and the assignment recorded with the Commissioner, before the date of the payment of the final fee, the patent will be issued to the assignee; or if a part interest be assigned and recorded in like manner, the patent will be issued jointly to the assignee and inventor.

The assignment must describe the application fully, giving date, serial number, date of filing same, or at least sufficient description so there can be no doubt as to the application referred to.

874. **Foreign Patents.**—The fact that an invention has been patented in a foreign country does not prohibit the inventor from taking out a patent in the United States, except in cases where the invention has been in public use in the United States for more than two years prior to the date of making application.

If a patent has been taken out in any foreign country on an invention, and it is afterwards patented in this country, the United States patent will not run longer than the one in the foreign country.

875. **Application for Patent.**—The application for patent must conform to the following regulations:

1. It must be written in the English language.

2. It must be made by the inventor himself if alive, even if the patent is to be issued to an assignee, but if he be dead it may be made by his executor or administrator.

3. A complete application consists of a petition, specification and oath, drawings, model, or specimens when required, and the first fee of $15.

4. All applications must be complete before they will be placed on file for examination.

5. Two years only will be allowed after filing petition for completing application, unless the delay can be proved to be unavoidable.

876. **The Specification.**—The specification is a carefully written document giving a full and complete description of the invention or discovery, and also setting forth in the plainest and most concise language the exact manner in which the same may be constructed or compounded.

The rules of the patent office recommend that the following order of arrangement should be observed in writing out specifications.

1. Preamble giving name and residence of applicant, the title of the invention, and if the invention has been patented in any country, a statement of the country or countries in which it has been patented, and the date and number of such patent.

2. General statement of the object and nature of the invention.

3. Brief description of the drawings, if any, showing what each view represents.

4. Detailed description, explaining fully the alleged invention and the manner of constructing, practicing, operating, and using it.

5. Claim or claims.

6. Signature of inventor.

7. Signature of two witnesses.

877. **Reissue.**—When, on account of error or oversight, the specification is defective or insufficient, a reissue of the patent is granted.

A reissued patent expires at the same date the original patent would have expired.

878. **Drawings.**—Whenever the nature of the invention or discovery admits of being illustrated by drawings, the applicant for a patent is required to furnish them. Each drawing must be signed by the inventor or his legal representative, and two persons must also sign the same as witnesses.

879. **Drawings Uniform.**—The rules of the patent office require that all drawings be made with black India ink and pure white paper, corresponding in thickness to what is called "Three Sheet Bristol Board," and that the size of the sheets be exactly

10x15 inches. One inch from each edge a single marginal line to be drawn, leaving the "sight" just 8x13 inches.

No marks, signatures, or writing of any kind are permitted on this margin. The signature of the inventor should be placed at the lower right-hand corner and the witnesses at the lower left-hand corner.

880. **Models.**—It is no longer necessary to send a model of the invention with the application, but if the examiner should think it advisable the applicant will be notified to furnish one.

881. **Examination.**—Applications are classified and taken up for examination as far as practicable in their regular order, but if the invention is thought to be of special importance to some branch of public service, it will be examined immediately at the request of the head of any of the departments of the government.

882. **Duration of Patent.**—Patents for designs such as busts, statues, pictures, patterns, designs for printing silks or other fabrics, etc., may be granted for a term of three and one-half years, or seven years, or fourteen years, as the applicant may desire, the fee charged increasing with length of time for which the patent is granted.

All other patents are granted for seventeen years, except where a patent has previously been granted in

some other country, and in that case the term of patent will expire at the same date of the expiration of the foreign patent, provided it does not exceed seventeen years.

No patent now in force can be extended except by special act of Congress.

883. **Final Fee.**—The final fee must be paid within six months of the time the patent is allowed and notice sent, otherwise the patent will be withheld and the invention become public property, unless a new application be filed within two years of the allowance of the original application.

THE LAW OF PATENTS

REVIEW QUESTIONS

What is a patent?

What may be patented?

May an inventor apply for a patent through an attorney?

What care must be taken in describing patent?

With whom is the correspondence conducted?

Is a power of attorney necessary if you have another person apply for the patent?

May an inventor and his attorney both carry on a correspondence with the patent office concerning the same patent?

Is it necessary for the inventor to go to the patent office personally?

Who may apply for patent in case of death of the inventor?

Is the patent office open for inspection?

What is a caveat (kā′-vē-at)?

Is the caveat and application made public?

After a patent is granted, may any one examine the specification, models, etc., at the patent office?

May an invention be assigned before the patent is granted?

Must the assignment be recorded at the patent office?

May an invention be patented in foreign countries as well as in the United States?

Of what does an application for a patent consist?

What does the specification contain?

What is meant by the reissue of patent?

Must the drawing be uniform?

Are models necessary?

When is an application examined?

For what length of time is a patent for design granted?

For what length of time are other patents granted?

Must a fee accompany every application for patent?

Must all fees be paid in advance?

What is the final fee?

If it be not paid within six months of notice, what is the effect?

CHAPTER XXXVIII

DIRECTIONS FOR REGISTERING COPYRIGHTS

884. **Definition of Copyright.**—A copyright is the exclusive privilege which the law gives an author for a limited time to publish, sell, and control an intellectual production, the object being to encourage the useful arts and promote the progress of science.

The following directions are condensed from the copyright laws recently issued from the office of the Librarian of Congress:

885. **No Postage Required.**—Do not send any stamps or stamped envelopes for return postage, as all mail matter sent from the copyright office addressed to any part of the United States (including Alaska), Canada, and Mexico is carried without postage, under government frank.

886. **State Nationality of Author.**—It is not necessary to state the name of the author if it is desired to keep the book or other article anonymous, but the nationality of the author of any literary, musical, or artistic work is required in order to determine the fee to be charged, and also to determine whether the article, in the case of a foreign work, is the production of a citizen of some country to the subjects of

which country the privilege of copyright in the United States has been extended.

887. **Name of Claimant.**—An entry of copyright claim can not be made unless the application for such entry contains a distinct statement in whose name the claim of copyright is to be registered. The application must distinctly state the full name and address of the person who claims to be the proprietor of the copyright.

888. **No Nom de Plume.**—No entry can be made under a fictitious name, such as a nom de plume or psuedonym (su'-do-nim). The real name of the claimant should be stated. If an author desires to preserve his anonymity (an-ō-nim'-i-ti) and to avoid putting his name on record, he should arrange to have some other person make the copyright entry in such person's name as "proprietor," under an arrangement with himself as author.

889. **Firm or Corporation.**—Entry can be made in the name of a firm, a corporation, or trustee, or in two or more names as joint authors or proprietors.

890. **Filing Title.**—The first step to be taken in order to secure copyright protection, according to law, is the transmission to the office of the Librarian of Congress a printed copy of the title of the book or other article. The copying of such a title page into the record books

of the copyright office becomes the recording of the claim of copyright.

891. **Formal Application.**—Formal application for copyright should be made by filling out the application blank, which, together with full instructions, is furnished upon request, and mailing it with the required fee, addressed, "The Librarian of Congress, Copyright Office, Library of Congress, Washington, D. C."

892. **Original Works of Art.**—In the case of a painting, drawing, statuary, or a model or design for a work of the fine arts, in lieu of, or in addition to the title, if there is one, a description is required to be sent, and a photograph to be filed. This photograph is required for identification, and should be a photograph taken directly from the work of art, and not a print, half-tone, photogravure, or any other kind of reproduction.

893. **Works of Several Volumes.**—In the case of works published in parts or volumes, the title of each part or volume should be recorded as if an independent work, but in newspapers, magazines, or other periodical publications, the title for each number, distinguished by volume, number, and date, is required to be filed as if it were a distinct work.

894. **Who May Secure Copyright.**—The author of

any literature, musical, dramatic, or artistic work, who is a citizen of the United States or a subject of any country to whose citizens the United States has extended the benefits of copyright, is privileged to obtain copyright in the United States.

895. **Assigns of Author.**—Any person to whom an author, who has the privilege of copyright in the United States, has transferred his copyright can apply for and obtain copyright entry as a "proprietor."

896. **Translater, Compiler, etc.**—A translator, editor, compiler, dramatizer, or abridger of a work may, under the copyright law, be considered as the author of the translation, the compilation, the dramatization, or the abridgement, and can apply for and obtain copyright registration.

897. **Deposit of Two Copies.**—The second step required to be taken to complete a copyright is the deposit of two copies of the article for which the title has been recorded. This should be made before the publication or distribution of any copies of the article, as the law explicitly provides for this.

898. **Penalty for Non-Compliance.**—Unless this deposit of two copies is made, a penalty of $25 is incurred.

899. **Best Edition.**—Two copies are required, and they must be complete copies of the best edition. The

explicit words of the Revised Statutes (sec. 4959) are: "Two complete printed copies thereof, of the best edition issued."

900. **Must be Made in the United States.**—In the case of books, the copies must be printed from type set within the limits of the United States. Photographs must be prints from negatives made in the United States, and chromos and lithographs from drawings on stone or transfers therefrom made in the United States.

901. **Serials.**—When a book is published serially in a periodical, two copies of each number of the magazine containing it should be deposited, and if afterwards published as a complete work, then copies of the completed book should be deposited.

902. **New Edition.**—In the case of a new edition the law requires the deposit of one copy.

903. **Penalty Labels.**—These articles for copyright deposits can be sent free by mail (without limit of weight), if the printed penalty labels furnished upon request by the Register of Copyrights are used.

904. **Notice of Copyright.**—The third step requisite to secure any valid copyright is the printing of the claim of copyright on each copy of the article protected. No copyright can be protected against in-

fringement unless the notice prescribed by law is inserted in every copy produced.

905. **Form of Notice.**—The wording of the notice is determined by the copyright statute, and must be one of these two forms:

a. Entered according to Act of Congress, in the year (here insert date) by (here insert full name of claimant) in the office of the Librarian of Congress, at Washington, or

b. Copyright (here insert year) by (here insert full name of claimant).

906. **Notice—Where Printed.**—In the case of a book, the law prescribes that this notice shall be printed on the title page, or the page immediately following; and in the case of other articles copyrighted the notice must be inscribed on some visible portion thereof.

907. **Penalty for False Notice.**—The law imposes a penalty of $100 upon any person who shall insert the notice of copyright, or words of the same purport, upon any book or other article which has not been copyrighted, whether such article be subject to copyright or otherwise; or who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in the United States.

908. **Copyright Fee.**—The copyright fees prescribed by law are as follows: For recording each title of a

book, or other article, which is the production of a citizen or resident of the United States, the charge is fifty cents. If a certificate of copyright (i. e., a certificate of the entry of the title) is desired, there is an additional charge of fifty cents, or $1 in all.

909. **Fee for Foreigner.**—For recording each title of a book or other work, the production of a person not a citizen or resident of the United States, the charge is $1. This fee of $1 is required to be paid for recording the title of every work whose original author or producer is "a person not a citizen or resident of the United States," whether the proprietor of the copyright is or is not a citizen or resident of the United States.

910. **Receipt for Deposit.**—For a certified receipt for the deposit of the two copies required by law, the charge is fifty cents.

911. **Certificate of Copyright.**—It is optional with the copyright applicant to pay the fee for a certificate at the time of entry of title. A certificate of copyright is convenient *prima facie* evidence of copyright entry, but this document can be had in the form of a certified copy of record at any time subsequent to the registration of title.

912. **Term of Copyright.**—The first term of copyright is for twenty-eight years from the time of re-

cording the title in the copyright office. The title is recorded on the day of its receipt in the copyright office, in accordance with the provisions of the copyright statutes, and no date prior to the day can be given to the entry title.

913. **Renewal.**—Within six months before the expiration of the first term of copyright, the copyright statutes provide (Revised Statutes, sec. 4954) that the author, if he be still living, or his widow or children, if he be dead, may have the copyright continued for a further term of fourteen years. This renewal requires the filing of the title a second time, and the deposit of the two copies, exactly the same as in the case of an original copyright.

914. **Assignment of Copyright.**—Copyrights are assignable in law by an instrument of writing. This should state the names of the assignee and the assignor, the title of the book or other article assigned, should contain a statement of "valuable consideration," and should be dated. Every assignment must be recorded in the copyright office within sixty days after its execution, "in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice." (Revised Statutes, sec. 4955.)

915. **Dramatization.**—The act of March 3, 1891, pro-

vides that "authors or their assigns shall have exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."

916. **Periodicals.**—The general title of a newspaper or periodical, apart from the contents, can not be registered for protection under the copyright law. Each number, therefore, of a periodical should be entered by its title, distinguished by a statement of the volume, number, and date of the issue. The entry of title should precede publication, and two copies of each issue should be sent to the Library of Congress, at the earliest moment after printing.

917. **International Copyright.**—The act of March 3, 1891, made it possible for foreign authors to obtain copyrights in the United States upon the same terms as native authors, except that the fee for entry in the case of the production of a foreigner is doubled. Congress, however, distinctly provided that the copyright privileges secured by the act should "only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits citizens of the United States to have the benefit of copyright on substantially the same basis as its own citizens.

918. **Not a Member of International Union.**—As the United States is not a party to the International

Copyright Union, copyright protection is not secured abroad by virtue of copyright registration in this country. Entry of copyright at Washington gives protection to the copyright only within the United States.

COPYRIGHT LAWS

REVIEW QUESTIONS

What is a copyright?

What is its object?

To whom must all correspondence be addressed?

Must application state name and nationality of author?

How do you file the title?

Must each volume of a set be copyrighted?

Who may secure a copyright?

May copyright be assigned?

How many copies must be deposited?

What is the penalty for failure to send copies for deposit?

Must notice and date of copyright be printed on each article?

What is the penalty for false notice?

What are the copyright fees?

What are the copyright fees for a foreigner?

For how long does a copyright run?

For how long may it be renewed?

To copyright periodicals, must a copy of each issue be sent?

What is international copyright?

CHAPTER XXXIX

COMMERCIAL CREDITS

919. It is said that more than 90 per cent of all financial transactions are based upon credit in some form, and this being the case, a short chapter on the subject of Commercial Credits should, we believe, have a place in a work of this character.

It is hoped that, brief as this outline is, it may be found to contain some useful suggestions to both debtor and creditor.

920. **Importance.**—To get an idea of the importance of this subject, let us suppose that Mr. A comes to you to borrow $100 at 6 per cent interest for sixty days, the interest on same being $1.

The use of the money is worth the price charged for it, and you can not afford to take any chances whatever on losing the principal; for if it is paid promptly when due, your profit is very small, and in case the principal is never paid, you must make one hundred more similar loans, each of which must be paid with interest, before you will be where you started.

It will therefore be seen if you should lose even one such loan out of each one hundred, you will receive

absolutely nothing for your work and nothing for the use of your money.

921. **Careless Merchants.**—In selling goods, making a loan, or allowing an individual to become indebted to you in any business way, you must consider first of all what the probabilities are of getting your money.

A careless merchant often gives too little attention to this matter, and when he sees an opportunity to sell goods for twelve dollars which cost him ten, he thinks only of the two dollars profit.

If nothing more than the profit was risked, he could well afford to take some chance, but if the bill is never paid he loses his two dollars profit, and along with it goes the cost of the goods, or ten dollars more.

922. **No Infallible Rule.**—Much may be learned by a careful study of the subject, but no rule can be laid down which will insure absolute safety, for the most careful and conservative credit man will have an occasional loss.

This does not change the fact, however, that a very large proportion of losses are due to carelessness, ignorance, and lack of sound business judgment on the part of the merchant.

923. **On What is Credit Based?**—In estimating the amount of credit to which an individual is entitled, many questions must be taken into consideration,

such as honesty, ability, character, education, capital, kind of business, experience, industry, habits, etc.

It will not be well to rely wholly upon any one of these factors, but the resultant of them all is the only safe measure of an individual's credit.

We will notice briefly some of the more important elements in commercial credit.

924. **Honesty.**—There are three kinds of honest people in the world, viz.: those who believe that virtue is its own reward; those who are honest to avoid punishment; and those who think that honesty is the best policy.

The two classes last mentioned can not be said to take a very broad view of the moral aspect of the question, but to be honest as a matter of policy is certainly much better than to be dishonest.

In the business world no questions are asked as to the motives which prompt one to honesty—so long as the integrity, reliability, and trustworthiness of the individual are firmly established.

It may be fairly stated that most business men, for one reason or another, are honest, and it is difficult to understand how a strong, intelligent individual can bring himself to believe that he can make dishonesty pay, in dollars and cents.

No one can afford to trust a dishonest person, even

though he has considerable means; far safer it would be to extend credit to a poor man of well known integrity.

Young and inexperienced persons who are really honest often make the mistake, when asking for a small credit, of dwelling too strongly upon the fact that they are "perfectly honest." This method is almost invariably followed by those who are notoriously dishonest, and any one who praises his own virtues too highly is in danger of being misunderstood.

We form an estimate of one's honesty (1) from our personal knowledge of the individual, (2) from his reputation, (3) from his appearance and general bearing.

925. **Ability.**—Ability in the sense it is here used has reference to practical business talent; for even the greatest genius can not achieve worldly success without a knowledge of practical affairs.

A man of ability must not only know what to do, but how to do it. He must be a man of action and force as well as thought, if he would push to the front and win the prizes of wealth and honor.

Business ability is largely a matter of development, and may be acquired by almost any one of ordinary capacity, by diligent study, observation, and experience. The real difference between one person and an-

other is not so much in their natural talent as in the persistency and determination with which they apply themselves to their work.

Self-respect, self-discipline, and self-control are three cardinal points, and should be developed to the highest degree possible, for any one who becomes master of himself, who can compel himself to do the thing he ought to do, even though it be a disagreeable task, has taken a long stride in the direction of practical wisdom.

926. **Character.**—Character is what you really are, while reputation is what the world believes you to be. You can not afford to be heedless of your reputation, but it is vastly more important that you jealously guard the integrity of your character. You can not always control what people say of you, but you can so live that if they speak evil of you their idle words will have no force with those who really know you.

If, after working hard and doing your very best, you fail in business, there are sure to be some hare-brained individuals ready to sneer and say unkind things of you; if you succeed, these same people, moved by jealousy, will lose no opportunity to berate you when your back is turned; but pay no attention to this, for your character is an estate which can only be

impaired by your own wilful act, and while it remains unblemished you are, in point of fact, unharmed.

Character is an important element in commercial credit, and even when capital is lacking a man of well known character will often be trusted for large amounts.

927. **Capital.**—The matter of capital is of considerable importance in deciding the amount of credit to be extended to any one, but it is also very important to ascertain how, when, and where the creditor obtained his capital. You want to know if it was a gift, a loan, an inheritance, or if it was accumulated by the creditor himself, and if so, how?

An inexperienced young man may be started up in business by a relative, or he may borrow the necessary money from a friend, or he may have recently inherited it, but in any of these cases it will be well to use great caution as to the amount of credit extended, for in the majority of cases he will lose all his money before he gets the experience necessary for his success.

The safest man is one who goes in as employe with some good house until he thoroughly learns the business. If made of the right kind of material he can, by hard work and strict economy, save enough money in a few years to start out for himself in a modest way. Such a man, having other qualities favorable, will al-

most invariably succeed, and he is entitled to a liberal line of credit, for he has shown in advance that he has industry, economy, and ability, all of which are important factors in success.

928. **Kind of Business.**—Many questions enter into the problem of success and failure, but some kinds of business are within themselves more hazardous than others, and this should be taken into consideration by those who are about to enter business, as well as those who are called upon to extend credit.

The following conditions make a business profitable:

1. Large per cent of profit on the goods.
2. Small expense in the way of clerk hire, rent, advertising, postage, delivery, etc.
3. Demand all seasons of the year.
4. Cash sales.

In some kinds of business the profits are very small and in others they are large, as, for example, the grocery man usually sells on a small margin, and he also has a large expense, as the stock requires a large room, a good location, considerable help, expense of delivery in cities, and he has many losses from bad debts; but to offset all this it may be said that his goods are staple, and his sales average well every day in the year.

On the other hand a millinery stock sells at a large profit with comparatively light expense and small losses on credit sales; but the active trade lasts only a couple of weeks during each season, and on this point the business loses all the advantages gained by good profits and low expenses.

The hardware business also yields a good profit where the competition is not too strong, and the same may be said of clothing, dry goods, jewelry, and many other lines; but unless a person has cultivated to a reasonable degree the qualities which bring success, his career is likely to be short, no matter what business he enters.

929. **Industry.**—Franklin tells us that sloth makes all things difficult, but industry all things easy, and certain it is that industry is one of the absolutely essential elements of success. One may have capital, honesty, education, moral character, and experience, but if he lacks industry there is no room for him in the business world.

Assistants and clerks may do most of the work; but the proprietor of any business must do the planning, and, further, he must see that his plans are carried out. If he takes but little interest he can not expect his clerks to show enthusiasm; he must set the pace for his entire establishment. Every great concern

bears the stamp and likeness of one man whose force, industry, and personality have been the dominating influence in its growth.

A successful man is invariably a worker, and to him hard work is his greatest pleasure. Industry, like most other things, is largely a matter of habit and may be cultivated by any one who thinks it worth his while to do so.

930. **Experience.**—Every man who expects to engage in business for himself should first secure a position with some well established house in his line where he can master every detail of the work.

By strict attention he will be able to learn much from the mistakes and losses of his employer as well as from his successful operations; but if he starts in business for himself without experience he will be placed at a great disadvantage; he will then have to learn by his own mistakes, and this is a long and costly road—so long and costly that it is not likely his money will last until he reaches the station called success.

A man of experience knows the road, for he has been over it many times; he is a good buyer, is able to see ahead, and can often avoid or fortify himself against reverses. He has perfect confidence in himself, and the public also has confidence in his ability.

All this commands credit, capital, and trade, which gives him a great advantage over his inexperienced competitor.

931. **Habits.**—Every man is a bundle of habits; some are good, some are bad. When you know a man's habits you know him. Metastasio (mā-täs-tä′zē-ō) the Italian poet, said: "All is habit in mankind, even virtue itself."

Among the habits which count most for good from a business point of view may be mentioned industry, temperance, economy, promptness, method, accuracy, politeness, and observation. Men who possess these virtues in a reasonable degree usually succeed in what they undertake to do.

It is well to bear in mind that good habits such as have been mentioned are not formed by a sudden resolution, but are the growth of years. They may be well likened to letters cut on the bark of a tree which widen out as the years go by. On the other hand, bad habits, like weeds and thistles, seem to spring up quickly and make rapid growth without the least encouragement. They are equally adapted to the poorest land or the richest soil. They thrive without rain, sunshine, or cultivation. The more deplorable the habit, the deeper it sinks its fangs into the victim, and greater effort is required to shake it off.

Men who have acquired the habit of drinking, gambling, etc., are entitled to our sympathy, but should be given only limited credit, for such habits demand their time and attention as well as their money.

It proves nothing to point to an occasional person of bad habits who has accumulated wealth, for, while one succeeds, thousands go down to utter ruin by following this course, and it may be safely said that the young man who acquires the habit of intemperance, extravagance, or licentious practices of any kind will very soon lose all interest in his business and end in failure.

932. **Education.**—Never before in the history of our country was commercial education so important as it is to-day. Business is now reduced to a complete system, and those who start without a practical education are sure to work at a great disadvantage; in fact it is next to impossible, to-day, for a young person to secure a position with a well established firm unless he has taken a special course of training preparatory for the work.

A thorough business education does not consist alone in the mastery of a stipulated list of subjects, but the successful student must be trained to accuracy; he must be systematic, he must be quick to

think and quick to act; he must have a thorough understanding of the importance of honesty, character, industry, habits, etc.; he must have some independence, must have a mind of his own and use it, for he who switches about like a weather vane, always believing with the man who argues the case last, will be short lived when he enters the arena of business.

The great value of a liberal education should not be overlooked, and every young man and woman who has a taste for higher education should, if possible, spend four years in some good university; but it should be remembered that no amount of general education will take the place of a technical business training.

A good business education is the surest safeguard against dishonesty; it gives its possessor a practical turn; it sharpens his talents; it gives him an expertness in business affairs which enables him to get money honestly, with comparative ease, thus removing from him the temptation to adopt dishonest methods.

933. **Married or Single.**—It may seem strange at first thought that this question should have any bearing upon one's credit, but it certainly has, and, everything else being equal, a married man will be given the preference over a single man.

Of course the mere fact that a person is married

does not in itself justify one in giving him credit, but, assuming that he has commendable qualities as a man, the fact of his domestic responsibilities would have a tendency to give him greater stability in the eyes of the community, and cause him to be regarded more in the light of a permanent fixture.

A married man with others depending upon him is more inclined to be economical and ambitious and is more watchful to maintain the integrity of his good name.

A single man may be just as strong, just as honest, and just as capable, but he is not surrounded by the conditions which spur him on to his very best efforts. He is more likely to rest upon his oars. He has no one depending upon him and is likely to become extravagant. If he makes a serious mistake, no one's reputation but his own will suffer. He is more likely to fall into bad company and bad habits, and if he becomes dissatisfied or involved in any difficulty, he has no ties to hinder him, and he can, if he chooses, step on the train and leave the country without a moment's notice.

It should not be inferred from what has been said that a young man can improve his commercial credit by marriage when his circumstances are not such as to justify the step, for in case of an ill-advised union the

credit would be injured instead of helped. It might be well to remember also that the character of the wife, and her tendency to economy or extravagance, all have an important influence upon the husband's credit.

MERCANTILE AGENCIES

934. **Definition.**—Mercantile agencies are companies which make a business of investigating the standing, credit, and financial condition of men engaged in all lines of business. The two most prominent companies of this kind are Bradstreet's and R. G. Dun & Co., each of which has branch offices in all of the principal cities in the United States and Canada.

935. **Object.**—The object of these commercial agencies is to furnish each of their subscribers with an estimate of the credit and financial strength of all the business men in the state or states where the subscribers do business, and to furnish them a detailed statement concerning any individual upon request.

936. **Of What Reports Consist.**—A large book for reference is compiled and revised every six months by the company, containing the names of every city, town, and village in the United States. Under these headings are listed the names of all persons, corporations, companies, etc., engaged in any kind of business. Op-

posite the names are placed certain letters and characters which indicate the kind of business, the estimated financial worth, and the reputation for promptness, honesty, and fair dealing of the person or concern.

When a subscriber desires more complete information in regard to a particular person, the company furnishes the same. These special reports give a full history of his character, honesty, ability, industry, habits, education, experience, capital, liabilities, etc.

937. **Complete Record.**—These agencies keep a complete record of every business man, and can usually give a reasonably accurate estimate of the amount of credit each one is entitled to. Of course they can not always ascertain the whole truth as to the financial condition of a person or firm, and very few wholesale houses rely on them entirely in deciding upon the rating a firm should have.

938. **How the Data is Obtained.**—The agencies obtain their data for their reports from various sources. In the first place they ask each man engaged in business to make a detailed written statement to them of all his resources and liabilities, together with information as to previous record, etc.

If he refuses to make a statement, they gather what information they can from the bankers, attorneys, and

other business men; in fact, these people are usually consulted in any event, for the agency must satisfy itself that the statement made by the dealer is not a misrepresentation.

939. **Who Their Patrons Are.**—These mercantile agencies are patronized principally by jobbers, wholesale dealers, manufacturers, and bankers, but they find customers among all classes of business men. If a wholesale dealer receives an order from a new customer in another city, he immediately turns to his reference book to ascertain the rating of his would-be customer. If it is satisfactory the goods are usually sent, but if the rating is unfavorable the order is refused, or sent C. O. D.

COMMERCIAL CREDITS

REVIEW QUESTIONS

What per cent of transactions are based upon credit?

In selling goods on credit, what must be considered first?

On what is a man's credit based?

Name three motives which influence people to be honest.

Which is preferable, honesty for policy sake or dishonesty?

Is it a good plan to refer frequently to one's own honesty?

How do you form an estimate of one's honesty?

May business ability be acquired?

Do men differ chiefly in natural talent or in willingness to do hard work?

What is character? What is reputation?

Which is the more important?

Who is the only person able to injure your character?

Does character in a measure take the place of capital?

Is it important to know how a man obtained his capital?

Are some kinds of business more hazardous than others?

Mention some of the advantages and disadvantages of the grocery business, also millinery, hardware.

Is industry important?

Is it wise to engage in business without experience?

Name some habits which affect one's credit.

Are habits a growth or are they formed quickly?

Is an education important to business success?

Is education a safeguard against dishonesty?

Does the fact that a man is married affect his credit?

Do the character, habits, etc., of the wife affect a man's credit?

What are mercantile agencies?

Name the two most prominent.

What is the object of these agencies?

What is contained in the commercial agency rating book?

What is contained in a special report?

Do business men rely altogether upon these agencies in giving a rating to a customer?

How do mercantile agencies get their information regarding business men?

Who patronize these agencies?

CHAPTER XL

BANKRUPTCY

940. **Bankrupt.**—A bankrupt is an insolvent person whose property is distributed among his creditors in accordance with the provisions of a system called the National Bankruptcy Law.

941. **Object of Bankruptcy Law.**—The object of a bankruptcy law is two-fold: first, the discovery and equitable distribution of all the debtor's property among his creditors in proportion to their claims; second, the complete discharge of the debtor from all his obligations, so that he may again start out in the world free from debts, and not afterwards be hampered or harassed by his old creditors.

942. **A Modern Idea.**—The law of bankruptcy is of comparatively modern origin. The ancients were unanimous in treating inability to meet a legal obligation as a most serious offense.

The early law of Rome gave to creditors the savage remedy of dividing the carcass of their debtor, or selling him and his entire family into slavery.

943. **A National Act.**—Congress has the power, under the constitution, to establish uniform laws on the subject of bankruptcy throughout the United States, and

on four different occasions this power has been exercised by enacting national bankruptcy laws. The first one was in 1800, the second in 1841, the third in 1867, and the fourth and present laws in 1898.

Each act, except the last one, was repealed after being on the statute books but a few years, and it remains to be seen how long the present law will prove satisfactory.

944. **Voluntary and Involuntary.**—The law recognizes two classes of bankrupts. Those who find themselves deeply in debt and are willing to surrender all they have in order that they may have their obligations canceled are called voluntary bankrupts. Those who have committed any of the several acts of bankruptcy defined in the law, and for that reason are forced into bankruptcy, are called involuntary bankrupts.

945. **Who May Become Bankrupts.**—First, any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt. Private bankers, or banks incorporated under the state or territorial laws, may be adjudged voluntary bankrupts.

Second, any natural person, except a wage-earner or a person engaged chiefly in farming or tilling the soil; any unincorporated company, and any corporation

engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default, or on impartial trial, and shall be subject to the provisions, and be entitled to the benefits of the national bankruptcy law.

946. **Acts of Bankruptcy.**—Acts of bankruptcy are as follows:

1. Conveying, transferring, concealing, or removing any part of the property with intent to hinder, delay, or defraud any creditors.

2. Transferring while insolvent any portion of the property to one or more of the creditors, with intent to give them preference over the others.

3. Suffering or permitting, while insolvent, any creditors to obtain a preference through legal proceedings.

4. Making a general assignment for the benefit of creditors.

5. Admitting in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of the act.

947. **Courts of Bankruptcy.**—The district court of

the United States in the several states, the supreme court of the District of Columbia, the district courts of the several territories, and the United States court in the Indian Territory and the District of Alaska are, by the act of 1898, designated as the courts of bankruptcy.

948. **Referees.**—For convenience and to facilitate the work, courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, appoint referees, each for a term of two years, and may, at their discretion, remove them for cause; and from time to time change the limits of the districts of the referees, so that each county where the services of a referee are needed may constitute at least one district.

The referees act under the instruction of the court and perform many of the functions of a judge in the cases brought before them.

949. **Duties of a Bankrupt.**—A bankrupt shall (1) attend the first meeting of his creditors if so directed by the court; (2) comply with all lawful orders of the court; (3) examine the correctness of all claims filed against his estate; (4) execute such papers as shall be ordered by the court; (5) transfer to his trustee all his property in foreign countries; (6) inform his trustee if he learns of any creditors or other

person trying to evade the provisions of the act; (7) prepare and file in court a schedule of his property and a list of his creditors and the security held by them, if any.

950. **Appointment of Trustee.**—The creditors of a bankrupt estate shall, at their first meeting after the adjudication (ad-jū-di-kā′-shun), appoint one of three trustees of such estate, whose duty shall be to take charge of the property and handle it according to instructions of the court. If the creditors do not appoint a trustee, then the court shall do so.

951. **Exemption of Bankrupts.**—The National Bankruptcy Law does not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition.

952. **Death or Insanity of Bankrupts.**—The death or insanity of the bankrupt shall not abate the proceeding, but it shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane; but in case of death, the widow and children shall be entitled to all rights of dower and allowances fixed by the laws of the state of the bankrupt's residence.

953. **Compositions.**—After a bankrupt has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and list of creditors, he may offer terms of composition or compromise to his creditors.

After such offer has been accepted in writing by a majority in number and amount of all creditors, an application may be filed to have the composition confirmed, provided the price to be paid by the bankrupt, together with the money necessary to pay all costs and prior claims, has been deposited as designated by the court.

954. **Composition Set Aside.**—The judge may, upon the application of parties in interest, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that a knowledge of such fraud has come to the petitioners since the confirmation. Such application must be filed within six months after the confirmation.

955. **Discharge.**—A discharge in bankruptcy shall release a bankrupt from all provable debts, except in the following cases:

1. Such debts as are due as taxes to the United States, the state, county, district, or municipality in which he resides.

2. Judgments in action for fraud, obtaining property by false pretense, or for wilful and malicious injuries to the person or property of another.

3. Debts which have not been duly scheduled in time for proof and allowance, unless such creditor had notice, or actual knowledge of the proceedings in bankruptcy.

4. Debts created by fraud, embezzlement, misappropriation, or defalcation, while acting as an officer, or in a fiduciary (fi-dū′-shi-ā-ri) capacity, that is, a position of trust, such as a guardian or attorney.

956. **Discharge Revoked.**—The judge may, upon application of parties in interest who have not been guilty of undue laches or negligences, revoke the discharge if, upon a trial, it shall be made to appear that it was obtained through the fraud of the bankrupt, and that a knowledge of the fraud has come to the petitioners since the discharge was granted. Such application must be made within six months after the granting of the discharge.

957. **Codebtor of Bankrupt.**—The liability of a person who is codebtor with, or guarantor, or in any manner a surety for a bankrupt shall not be altered by the discharge of such bankrupt.

958. **Set-offs and Counter-claims.**—In all cases of mutual debts or mutual credits between the estate of

a bankrupt and a creditor, the account shall be balanced and the one debt shall be set off against the other, and the balance shall be allowed or paid.

BANKRUPTCY

REVIEW QUESTIONS

Who is a bankrupt?

Does the bankruptcy law favor the debtor or the creditor?

Is it of recent origin?

Were people formerly severe with delinquent debtors?

Is the present law an act of Congress?

Is it the first bankruptcy law passed in this country?

Distinguish between voluntary and involuntary bankrupts.

Who may become voluntary bankrupts?

Who may become involuntary bankrupts?

What are acts of bankruptcy?

In what courts may a petition of bankruptcy be filed?

Who is a referee, and how is he appointed?

Is the state divided into districts, and if so, of what size?

Name the duties of a bankrupt.

Who is a trustee and how appointed?

Does the bankruptcy law recognize the state exemption law?

Does the death or insanity of the bankrupt stop proceedings?

What is meant by composition?

May it be set aside?

What is a discharge in bankruptcy?

Are all debts discharged?

May a discharge be revoked?

Are codebtors of bankrupts discharged?

What is counter-claim or set-off?

GLOSSARY

Abatement—Stopping, decreasing.

Abduction (ab-duk′-shon)—To carry away by force.

Acceptor—(ak-sep′-tor)—One who writes "Accepted" across a bill or draft and thereby becomes responsible for the payment.

Acquittal (a-kwit′-al)—A verdict of "not guilty."

Act of God—An act of natural forces which could not have been foreseen.

Action—A suit in court.

Ad libitum (ad-lib′-i-tum)—At one's pleasure.

Adjustment (a-just′-ment)—The act of settling.

Affidavit (af-i-dā′-vit)—A sworn statement.

Agistor (a-gis′-tor)—One who pastures stock.

Alias (ā′-li-as)—An assumed name.

Alibi (al′-i-bī)—A plea of having been elsewhere at the time an offense was committed.

Alien (āl′-yon)—A foreigner.

Alimony (al′-i-mō-ni)—An allowance to the wife from the husband in divorce proceedings.

Allonge (a-lunj′)—A slip of paper attached to a draft to receive endorsements when the back of draft will hold no more.

Alteration—Any material change in a negotiable paper.

Ambiguous (am-big′-ū-us)—Of doubtful or uncertain nature.

Appurtenance (a-per′-te-nans)—That which belongs to another thing.

Arbitration (ar-bi-trā′-shon)—Settling a dispute out of court, by persons agreed upon.

Arson (ar′-son)—Malicious burning of a house.

Assault (a-salt)—An unlawful attack upon any person.

Attache (at-ta-shā′)—One attached to another person, especially to an embassy.

Attachment—A writ issued by the court directing an officer to take possession of certain property.

Attestation (at-es-tā′-shon)—Witnessing.

Attorney in fact—A private attorney having authority to act in a particular matter.

Bail—Security for appearance in court.

Bailment—The delivery of a thing to another without transferring the ownership.

Barter—To exchange one article for another.

Battery—Unlawful beating of any person.

Beneficiary (ben-ē-fish′-i-ā-ri)—One who receives a benefit.

Bequeath (be-kweth′)—To give by will.

Bilateral—Two-sided.

Bona fide (bō-na fi′-dē)—In good faith.

Brief—The principal points of a lawyer's argument.

Buyer's option—A privilege which the purchaser has of taking the article at a price agreed upon within the time specified.

By-bidder—One who bids in behalf of the owner for the purpose of raising the price.

Carte blanche (kärt blänsh)—Unlimited authority to act or decide.

Casualty (kaz′-ū-al-ti)—What happens by chance.

Caveat (kā′-vē-at)—A notice filed in the patent office.

Caveat emptor (kā′-vē-at)—Let the buyer beware.

Chattel (chat′-el)—An article of personal property.

Codicil (kod′-i-sil)—A writing by way of supplement to a will.

Collateral (ko-lat′-e-ral)—Accompanying, aiding.

Commercial law—The law by which commerce is regulated.

Common law—Those customs which by long usage have become crystallized into law.

Consideration—The motive which prompts one to enter into a contract.

Constituent (kon-stit′-ū-ent)—One who appoints another as his agent.

Constructive delivery—A delivery not actually made, but one recognized by law.

Contempt of court—Disobedience or open disrespect to an order of court.

Contingency (kon-tin′-jin-si)—An event that may or may not occur.

Corporation—An artificial person created by law.

Coup d' etat (koo-dah-tah′)—A bold stroke of policy.

Decree (dē-krē′)—A judgment or award.

De facto (dē-fak′-tō)—In fact, in reality.

Defendant (dē-fen′-dant)—A party against whom an action at law is brought.

Demur (dē-mer′)—To file an objection.
Deponent (de-pō′-nent)—One who makes an affidavit.
Desideratum (dē-sid-e-rā′-tum)—Something desired.
Dictum (dik′-tum)—An opinion by a judge outside of the point to be decided, or a remark given without deliberation.
Digest (dī′-jest)—A summary or compilation of concise statements.
Distrain (dis-trān′)—To seize the property of a tenant for rent due.
Domicile (dom′-i-sil)—A place of residence.
Dower—The interest which a widow has in the real estate of her deceased husband.
Duress (dū′-res)—Restraint of liberty.

Earnest—Part payment to bind a bargain.
Easement (ēz′-ment)—The right one possesses in the land of another, distinct from ownership.
Ejectment (ē-jekt′-ment)—The act of dispossessing or ousting.
Eleemosynary (el-ē-mos′-i-nā-ri)—Of or pertaining to alms.
Emancipation (ē-man-si-pā′-shon)—Freeing a minor from parental control.
Enjoin (en-join′)—To command.
Escheat (es-chēt′)—The reverting of lands to the state.
Estoppel (es-top′-el)—A bar by which a man is prevented from denying a fact, on account of his own previous act or representation.
Et cetera (et-set′-e-ra)—And so forth, abbreviated etc.
Execution (ek-sē-kū′-shon)—The act of signing, sealing, and delivering an instrument; the official order by which an officer is empowered to carry a judgment into effect.
Executory (eg-zek′-ū-tō-ri)—Something to be carried into effect in the future.
Executrix (eg-zek′-ū-trix)—A female executor.
Exemplary (ek′-sem-plā-ri)—Serving as an example.
Ex officio (eks-o-fish′-i-ō)—By virtue of office.
Ex parte (eks-par′-tē)—One side or for one party only, as ex parte evidence.
Ex post facto law—A law which makes a crime of an act done before its passage.

Federal Constitution—The fundamental or organic law of the United States.

Fee simple—An absolute estate of inheritance.

Fee tail—An estate descendable to a certain line of heirs only.

Felony (fel′-on-i)—Any high crime punishable by death or imprisonment.

Franchise (fran′-chiz)—A privilege of a public nature conferred upon an individual or corporation.

Garnishee (gar-ni-shē′)—To stop in the hands of a third person, money due to the plaintiff.

Garnishment (gar′-nish-ment)—Warning to a person in whose hands the effects of another are attached.

Grantee (gran-tē′)—A person to whom land is granted or conveyed.

Grantor (gran′-tor)—A person who grants or conveys land.

Guaranty (gar′-an-ti)—To become responsible for the obligation of another person.

Habeas corpus (hā′-bē-as kor′-pus)—A writ issued by a judge requiring a person to be brought into court.

Hereditament (her-ē-dit′-a-ment)—Any property that may be inherited.

Homicide (hom′-i-sīd)—The killing of a human being.

Identification (īden′-ti-fi-kā′-shon)—To establish the identity of.

Impolitic (im-pol′-i-tik)—Not according to good policy.

Inchoate (in′-kō-āt)—Recently or just begun.

Indemnify (in-dem′-ni-fī)—To make good, to reimburse.

In extenso (in eks-ten′-sō)—In full, as to print a paper in extenso.

Injunction (in-junk′-shon)—An order of court prohibiting some one from doing a certain thing.

Inquest (in′-kwest)—A judicial inquiry.

In re (in rē)—In the matter of.

Insolvency (in-sol′-ven-si)—The condition of being unable to pay one's debts.

In statu quo (in stā′-tū kwō)—In the condition in which it was before.

International law—The law which regulates the intercourse of nations.

Intestate (in-tes′-tāt))—One dying without having made a will.

In toto (in tō-tō)—In all, in the whole.

Involuntary alienation (in-vol′-un-tā-ri āl-yen-ā′-shon)—The conveyance of property without the consent of the owner.

Ipse dixit (ip′sē dik′-sit)—An assertion without proof.

Judgment (juj′-ment)—The decision of a judge.

Laches (lach′-ez)—Inexcusable delay.

Larceny (lar′-se-ni)—Stealing.

Legacy (leg′-ā-si)—A gift of personal property by will.

Lessee (le-sē′)—A person to whom a lease is granted.

Lessor (les′-or)—One who grants a lease.

Lex loci (lo-sī)—Law of the place.

Libel (lī′-bel)—Malicious misrepresentation.

Lien (lē′-en)—A right to hold property as against the owner for some claim.

Liquidated damages (lik′-wi-dāt-ed)—Damages which are fixed in amount by contract.

Malfeasance (mal-fē′-zans)—A wrongful or unlawful act.

Mandamus (man-dā′-mus)—A writ issued by a superior court commanding a person or lower court to do a certain thing.

Mandatary (man′-da-tā-ri)—One who acts for another.

Mandator (man-dā′-tor)—The person who employs another.

Metes and bounds—An early system of surveying by which streams, rocks, trees, etc., served to mark the limits of an estate.

Misfeasance (mis-fē′-zans)—The doing of a lawful act in a wrongful manner.

Misnomer (mis-nō′-mer)—Use of a wrong name.

Mortgagee (mor-gā-jē′)—One to whom property is mortgaged.

Mortgagor (mor′-gāj-or)—One who mortgages property.

Municipal law (mū-nis′-i-pal)—The law of any municipality as distinguished from international law.

Naturalization (nat′-ū-ral-i-zā′-shon)—The act of investing a foreigner with the rights of a natural citizen.

Nolle prosequi (nol′-e pros′-e-kwī)—Statement of plaintiff that he will not prosecute the case.

Non compos mentis (non kom′-pos men′-tis)—Not capable mentally, of unsound mind.

Non est—Is not.

Nonfeasance (non-fē′-zans)—Omission of some act which should have been performed.

Nudum pactum (nū′-dum pak′-tum)—A naked contract or promise made without consideration.

Nuisance (nū′-sans)—That which is offensive or injurious.

Nuncupative will (nung′-kū-pā-tiv)—Verbal, or unwritten will.

Ouster (ous′-ter)—Ejecting, or putting one out of possession of his property.

Per diem—By the day.

Perjury (per′-ju-ri)—Wilful utterance of false testimony under oath.

Per se—By itself considered.

Petty larceny—Stealing anything of less than a certain value specified by statutes.

Plaintiff (plān′-tif)—One who sues another.

Post diem—After the day.

Post mortem—After death.

Posthumous (pos′-tū-mus)—Born after the death of the father.

Potential (pō-ten′-shal)—Possible, as opposed to actual.

Power of attorney—An instrument by which one person appoints another as his agent to do some special act.

Prescription (prē-skrip′-shon)—Rights which arise from long use.

Prima facie (prī-ma fā′-shi-ē)—At first view or appearance.

Primogeniture (prī-mō-jen′-i-tūr)—The law by which the eldest son succeeds to all of his father's real estate.

Priority (prī-or′-i-ti)—Having the first right.

Promoter (prō-mō′-ter)—One who organizes an institution.

Protest (prō′-test)—The steps taken to hold a drawer and endorser of a paper when it has been dishonored.

Proxy (prok′-si)—One who represents another.

Quasi (quā′-sī)—A prefix meaning as if, nearly, apparent.

Quit-claim deed—A deed without warrant of title.

Qui vive (kē-vēv′)—To be watchful, on the alert.

Quo warranto (kwō wo-ran′-tō)—A writ demanding that a person show by what warrant he exercises certain privileges.

Recoupment (rē-koop′-ment)—Holding back a part as a discount.

Regime (rā-zhēm′)—Character of government and social system.

Reimburse (rē-im-bers′)—To pay back, to refund.

Replevin (rē-plev′-in)—An action to recover possession of property wrongfully held by another.

Residue (rez′-i-dū)—Remainder, what is left over.

Restraint of trade (re-strānt′)—Hindering trade.

Resume (rā-zū-mā′)—A summing up, a condensed statement.

Salvage (sal′-vāj)—Property saved from destruction by extraordinary effort, as the saving of a ship from the sea, fire, or pirates.

Seal—An impression on paper or wax attached to a document after the signature.

Seizen (sē′-zin)—Possession of property under rightful title.
Set-off—A counter-claim; one debt set up against another.
Sine die (sī′-nē dī′-ē)—Without date.
Sine qua non (sī′-nē kwā-non)—Something absolutely indispensable.
Specialty (spesh′-al-ti)—A contract under seal.
Statute law (stat′-ūt)—A law prescribed by a legislative power.
Statute of frauds—A statute to prevent frauds requiring certain contracts to be written.
Statute of limitations—Statute by which a right of action is limited to a certain period of time.
Subpoena (sub-pē′-na)—A writ commanding attendance at court.
Subrogation (sub-rō-gā′-shon)—Putting of one person or thing in place of another.
Summons (sum′-onz)—A writ calling the defendant to appear and answer the charge against him.
Surety (sūr′-ti)—One who binds himself for another.

Tenant (ten′-ant)—One having temporary possession of land.
Tort—A wrongful act which subjects the doer to an action for damages.
Trespass (tres′-pas)—Unlawful or forbidden entrance.
Trover (trō′-ver)—An action to recover the value of chattels wrongfully converted by another.

Ultimatum (ul-ti-mā′-tum)—A final proposal or statement of conditions.
Ultra vires (ul-trä vī′-rēz)—Beyond the legal power of a person court, or corporation.
Unilateral contract (ū-ni-lat′-e-ral)—An agreement which binds one person only.
Usury (ū′-zhu-ri)—A higher rate of interest than is allowed by law.

Venire (vē-nī′-rē)—A writ directing the sheriff to summon a jury.
Verbatim et literatim (ver-bā′-tim et lit-e-rā′-tim)—Word for word and letter for letter.

Waiver (wā′-ver)—Giving up some known right.
Ward—One who is under a guardian.
Warranty (war′-an-ti)—To guarantee.
Waste—Unnecessary injury done by a tenant to real estate.

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